

# EPC COMMISSION MINUTES & AGENDA

MONTH June

YEAR 1988

5. Drainage, abandoned wells, sinkholes as contaminant sources
6. Land-applied solid/hazardous wastes.

Mr. Kuhn explained the education programs in detail.

Motion was made by Charlotte Mohr to approve a contract with Iowa State University for Vocational and Agricultural Education Programs as presented. Seconded by Catherine Dunn. Motion carried unanimously.

#### CONTRACT -- DEVELOPMENT OF GROUNDWATER EDUCATION MATERIALS FOR JUNIOR HIGH SCIENCE

Stan Kuhn, Division Administrator, Administrative Services Division, presented the following item.

It is recommended that the Commission authorize the department to contract with six educators to develop groundwater education materials for junior high science. These individual contracts and a 28-E agreement with the Department of Education (DE) will replace a DE contract approved by the EPC in April. As the DE contract was finalized, it was found that, due to the summer absence of key DE personnel, it would be more effective and efficient for the DNR to contract with individual educators, rather than the DE contract with individuals. There will be no change in the total amount of money for this project. The six educators include: Sharon Johnson, Webster City; Joe Moore, Luana; Don Perschau, Des Moines; Ken Thompson, Marshalltown; Jack Troeger, Ames; and Jan Wehlert, Iowa City.

Discussion took place regarding program coordination.

Motion was made by Catherine Dunn to approve a contract for Development of Groundwater Education Materials for Junior High Science as presented. Seconded by Donna Hammitt. Motion carried unanimously.

#### RANKING OF PROPOSALS UNDER SOLID WASTE GRANTS PROGRAM

Teresa Hay, Division Administrator, Waste Management Authority Division, presented the following item.

The Waste Management Authority Division, along with a selection committee composed of a member from the Environmental Protection Division and the Energy and Geological Resources Division have ranked the proposals submitted under the Solid Waste Grant Program. The ranking is subject to approval from the Energy Fund Disbursement Council. When negotiated, all contracts over \$25,000 are subject to approval by the Commission.

A copy of the ranked proposals is attached.

The hearings were heavily attended by individuals associated with the ag-chemical industry. These people tended to support state adoption of federal drinking water standards for the protection of ambient groundwater when federal standards were developed. Written comments overwhelmingly support the idea of the state not adopting standards and focusing its attention on prevention of contamination, at least until it can be shown that this approach will not work.

There appeared to be a significant amount of confusion over the use of terms in both the hearings and the written comments. As an example, many people said that they favored "high standards." The context of their comments would tend to lead us to believe that they were in favor of a "high standard of protection" and not in favor of allowing a large amount of contamination. As a result of this confusion, we are exploring the possibility of preparing a written questionnaire that would clearly define the terms and request the respondent to specify their position on standards given those definitions. We would send this questionnaire to all of the people who attended the hearings and those who provided written comments so that we can verify that we understand their position on the issue of standards.

Mr. Combs stated that the questionnaire will be sent out, and compilation of answers reviewed, over the summer. This information along with written comments will be used to prepare the report for the General Assembly.

Discussion followed regarding geographic location of comments being received, and attendance at the meetings.

This was an informational item; no action was required.

#### APPOINTMENT -- CARL CARLSON, DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP

Allan Stokes stated that, at the last Commission meeting, the Commission expressed interest in the bio-tech/bio-genetic research process, and he then introduced Carl Carlson to address this subject.

Mr. Carl Carlson, State Entomologist with the Department of Agriculture and Land Stewardship (DALs), addressed the Commission giving a history and outline of the program and its regulatory aspects. He discussed in detail the process being used and the cautions being exercised to prevent accidents. Mr. Carlson stated that DALs is the lead agency in the state for this project. He added that there is an advisory committee to represent other interested state agencies (DNR, DPH, DED) and the academic community. This advisory committee will primarily review application requests, release material to the field, and provide information to the federal agencies as requested. One application has been completed regarding genetically altered tobacco plants, and another is presently being reviewed. The theory is to reduce chemicals and pesticide use in plants.

Keith Uhl inquired as to whether there is any danger involved in this process.

Mr. Carlson stated that they do not know, at this point, if there are any dangers involved, but in the tobacco project there was no danger present.

Motion was made by Nancy Lee Siebenmann to approve Notice of Intended Action-- Chapters 20, 22, 26 and 28, Revisions to Air Quality Rules (PM<sub>10</sub>). Seconded by Clark Yeager. Motion carried unanimously.

#### PROPOSED CONTESTED CASE DECISION -- ELOISE REESE (Continued)

Mike Murphy stated that the Commission has the opportunity to review this case on their own motion and that each party also has the opportunity to appeal. Mr. Murphy stated that there has been an application for rehearing filed.

Mike Murphy stated that the attorney for Mrs. Reese contended that the hearing officer erred in the conclusions, and staff responded that the matters have been presented for the record and that it is really a matter for appeal rather than rehearing.

The Commission took no action; this has the effect of upholding the hearing officer's decision unless there is an appeal.

#### STATE REVOLVING FUND

Allan Stokes, Division Administrator, Environmental Protection Division, presented the following item.

A report will be presented on the status of the development of state rules for implementing the revolving fund to utilize federal grant funds anticipated to be available in fiscal 1989. A schedule showing projected activities necessary to implement the program will be included. A report by a representative of the Iowa Finance Authority is also expected.

Mr. Stokes stated that Congress, in creating the State Revolving Fund (SRF), was trying to provide for some type of perpetual loan fund to replace the old traditional grant program to assist in constructing sewage treatment plants. EPA will give states (who qualify) a letter of credit to draw down on. We must first use the monies to make loans to address any unmet needs in terms of compliance with the July 1, 1988 date. Mr. Stokes explained the term "equivalency" in dealing with these funds. He stated that funds totaling the federal contribution to the SRF must be loaned to projects which meet the cited grant requirements. Monies over and above that do not have to meet the requirements. However, most states are going to deal with all monies in the same fashion, rather than keep them separate. Mr. Stokes distributed a copy of the 16 provisions that will have to be reviewed, addressed, and met under the loan program.

Mr. Stokes stated that the department will need to do the following in a very short period of time: 1) enter into an operating agreement with the EPA; 2) develop an intended use plan; and 3) document appropriate legislative authority and show appropriate use and mechanisms to operate the program.

Mr. Stokes emphasized that it is critical to get our foot in the door in FY89 to provide better opportunity for the department to receive future monies. Mr. Stokes also distributed a copy of the Iowa SRF Rules General Outline along with a Projected Development Schedule with completion proposed by February, 1989.

During the period of May 1, 1988 through May 31, 1988, reports of 99 hazardous conditions were forwarded to the Central Office. Two incidents are highlighted, followed by a general summary and the number per field office.

Date Reported and County	Description: Material, Amount, Date of Incident, Cause, Location, Impact	Responsible Party	Response and Corrective Actions
5/06/88 WORTH	On May 6, 1988, a spill of 3,000 gallons of 28% nitrogen fertilizer and 150 gallons of kerosene occurred at the intersection of Highway 9 and County Road 834 near Manly, Iowa. The spill resulted when a truck overturned while trying to round a corner. All material spilled into a ditch.	Farmers Coop of Manly Manly, Iowa	The truck was righted and removed from the scene and free liquid was recovered from the ditch. Contaminated soil was removed for application on land.
5/12/88 MUSCATINE	Two engines and 14 cars of a train derailed near Durant, Iowa on May 12, 1988, and about 20,000 gallons of 28% nitrogen fertilizer spilled from two tank cars into Mud and Sugar Creeks and killed several thousand fish.	Iowa Interstate Railroad Iowa City, Iowa	Due to a six-foot long gash in one tanker and a one-inch rainfall at the time of the event, most of the material entered the streams soon after the derailment. Downstream water users were notified of the incident, and the creeks were monitored for high levels of ammonia and effects on aquatic organisms. The remaining fertilizer in one tank car was pumped out and the cars were rerailed. Contaminated soil near the stream was removed.

Numbers in Parentheses Represent Reports for the Same Period in Fiscal Year 1987

Month	Total # of Incidents	Substance Type				Mode				
		Petroleum Product	Agri. Chemical	Other Chemicals and Substances	Handling and Storage	Pipeline	Highway Incident	RR Incident	Fire	Other
Oct	69	47	4	18	53	0	9	1	2	4
Nov	48	35	3	10	37	0	4	0	1	6
Dec	46	36	3	7	39	1	2	0	0	4
Jan	54	43	4	7	45	1	5	1	1	2
Feb	51	30	2	19	37	1	9	3	1	0
Mar	67	41	10	16	49	1	11	2	0	4
Apr	130	58	50	22	85	0	36	2	2	5
May	99 (74)	39 (24)	42 (29)	18 (21)	48 (39)	0 (0)	42 (24)	2 (2)	1(6)	6 (3)

Total # of  
Incidents Per

Field Office      01 02 03 04 05 06  
This Period      20 12 10 17 22 18

DEPARTMENT OF NATURAL RESOURCES  
ENVIRONMENTAL PROTECTION COMMISSION  
ATTORNEY GENERAL OFFICIALS  
J. S. J. 1988

Name, Location and Region Number	New or Updated	Program	Alleged Violation	OMB Action	Status	Date
Lamar, Delbert JTH Ind Pleasant Valley (6)		Solid Waste	Open Dumping	Order/Penalty	Referred	11/17/87
Kearsville, City of (6)		Wastewater	Monitoring	Order	Referred	5/17/88
Lake Grove, City of (6)		Wastewater	NIP	Order	Referred	4/24/88
Mechanicville, City of (6)	New	Wastewater	NIP	Order	Referred	5/17/88
St. Pleasant, City of (6)	New	Wastewater	NIP	Order	Referred	4/26/88
Hewitt, City of (3)		Wastewater	NIP compliance Schedule	Order/Penalty Referred to Attorney General	Referred	1/21/88
J.B. Nylon, Ltd. (3)	New	Solid Waste	Open Dumping	Attorney General	Referred	5/17/88
Pearl: Derby Oil Company Davenport (6)		Wastewater	Prohibited Discharge	Referred to Attorney General	Petition Filed Judgment Amended Cleanup Plan Approved	3/1/83 10/12/84 10/24/84 1/27/88
Pleasant Creek Est. Benlon Co. (3)		Drinking Water	Penalty Non payment	Order/Penalty	Referred Informal Settlement	1/21/88 4/13/88
Proppellier, William et al. Lorain County (6)		Flood Plain	Channel Change	Referred to Attorney General	Referred Suit Filed Referred Judgment	3/20/87 6/25/87 5/18/87 4/86
Salisbury Ronald, fresco-X Des Moines (5)		Hazardous Waste	Treatment and Storage Violations	Referred to Attorney General	Appealed to Sup. Court Decided in our favor	7/86 12/23/87
Hamden WWT, City of	New	Wastewater	Monitoring	Order	Referred	4/26/88
Shiller Shield Buffalo Center (6)		Air Quality	Excess Emissions, Construction w/o permit	Order/Penalty	Referred Suit Filed Default Judgment \$7,500	2/20/87 6/30/87 12/22/87
Sidney, City of (6)		Wastewater	NIP	Order	Referred	3/24/88
Timberline Assoc. Ltd. Des Moines (6)	Updated	Drinking Water	MCL Radioactivity	Order/Penalty	Referred Consent Decree	1/21/88 1/20/88
Twelve Mile House Bernard (1)		Drinking Water	Monitoring: Operation Permit	Order/Penalty	Referred	1/21/88
Wilton Steel Processing (6)	New	Wastewater	Prohibited Discharge	Referred to Attorney General	Referred	5/17/88
Waterhouse, James & Berna Washington County (6)		Flood Plain	Channel Change	Referred to Attorney General	Referred Suit Filed Trial Set	3/16/87 5/13/87 5/13/88
Wolfe, Robert C. Bonne Vista and Cherokee Counties (3)		Wastewater	Prohibited Discharge	Order	Referred Consent Decree Contempt Finding Contempt Finding Contempt Finding	11/27/84 4/25/85 7/02/85 9/25/86 8/24/87
Woodland Park Johns County (1)		Wastewater	Prohibited Discharge	Order	Referred Suit Filed Temporary Injunction	7/31/86 11/19/86 3/13/87
Yocum, Max Johnson (6)		Flood Plain	Prohibited Construction	Defending Referred to Attorney General	Suit Filed Motion to Dismiss Denied Referred Counter Claim Filed	12/18/84 3/06/87 8/01/85 7/12/85 10/85
					Trial Held Judgment for Department Appealed to Supreme Court	6/16/87 8/18/87 9/01/87

ENVIRONMENTAL PROTECTION COMMISSION

NAME

COMPANY OR AGENCY

CITY

(Please print)

Tim Rasmussen  
Army Corps

Tenaborn Center  
CR Cayote

Sioux City  
Cedar Rapids

Walter Ecker

ITCA

D. M. T. a

Robert G. Pyle

RADIO IOWA

DAN VEST

GROWMARK, Inc.

Bloomington, IL

Carl Carlson

IDA YLS

Des Moines, Ia

Kerth Chernofsky

Hyg Lab

Javal City

Paul McMurphy

Keokuk Landfill

Keokuk

Joe Roe

Radio Iowa

DSM

Robert G. Pyle  
Jack Seemer

IABI

DSM

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 5

DECISION

IOWA STATE UNIVERSITY CONTRACT FOR VOCATIONAL AND AGRICULTURAL EDUCATION PROGRAMS.

The Department requests approval to enter into a contract with ISU to develop educational materials and provide in-service training on groundwater to Iowa vocational agriculture teachers. The \$32,865 contract would be paid for from the oil overcharge account of the Groundwater fund. Subjects to be covered in the program are as follows:

1. hydrogeology
2. Agriculture and urban use of nitrogen fertilizer and pesticides
3. Underground tanks and pipelines
4. Hazardous substance handling and storage
5. Drainage, abandoned wells, sinkholes as contaminant sources.
6. Land applied solid/hazardous wastes.





TERRY E. BRANSTAD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES  
LARRY J. WILSON, DIRECTOR

May 19, 1988

RECORD COPY  
File Name Wapello Sew  
Senders Initials WJ

Honorable L. J. Thompson  
City Hall  
Wapello, Iowa 52653

Re: Request for Equivalent to Secondary for City of Wapello Wastewater Treatment Plant

Dear Mayor Thompson:

The Department has determined that the City's wastewater treatment plant is not eligible for equivalent to secondary effluent limits as per Department Rule 567-62.3(3) Iowa Administrative Code (I.A.C.).

The staff reviewed the City's application and supporting documentation submitted during the April 21, 1988 meeting and arrived at this conclusion for the following reasons:

Proper operation of the facility as per Rule 567-62.3(3) "a" was not evident, because the existing design does not permit the facility to be operated as a controlled discharge lagoon, with spring and/or fall discharges, due to its limited storage capacity. The lagoon has been operated as a continuous discharge facility except for short times when storage was accomplished.

Also the required monitoring listed in the NPDES permit was not always carried out as specified. The permit requires that discharge sampling begin on the third day after discharge is initiated. Also weekly sampling of the discharge is required. Several of the monthly operating reports submitted by the City indicate that these requirements were not met.

The facility operating as a continuous discharge lagoon cannot meet Rule 567-62.3(3)"e" in that it received hydraulic and organic loads prevented it from consistently complying with equivalent to secondary limits contained in Rule 567-62.3(3)"f". An examination of 37 months of data reveals that the average design flow of 0.415 million gallons per day was exceeded 6 times and the average design organic load of 370 pounds biological oxygen demand was exceeded 10 times.

ceeded frequently. The average monthly design flow of 415,000 gallons per day was exceeded 6 out of 37 months. Values where flow exceed design ranged from 419,000 to 640,000 gallons per day. The average monthly design organic load of 370 lbs BOD per day was exceeded 10 out of 37 months. Values that exceeded the design BOD load ranged from 372 to 1024 lbs BOD per day.

3. The facility had 3 violations of the 45 mg BOD5/L equivalent to secondary limit or was in compliance 91.9% of the time. This does not meet the hearing officer's determination that consistent compliance means 95% of the time.
4. The facility had 2 violations of the 80 mg TSS/L equivalent to secondary limit or was in compliance 94.6% or 95% of the time. This meets the hearing officer's determination of consistent compliance.

#### Summary:

1. The facility cannot consistently meet standard secondary effluent limitations.
2. The facility is not properly operated in that it cannot be operated as a controlled discharge lagoon with spring and/or fall discharges. The facility has had long periods of continuous discharges. Also the design storage capacity is limited to 36.2 days at design flow. The City did not monitor the facility as required by the NPDES permit. rule 567-62.3(3)"a" requires proper operation and maintenance.
3. The facility did not always provide significant biological treatment of BOD as required by rule 567-62.3(3)"c". The percent BOD removal was less than 65% for three months out of 37 examined. Special consideration may be given due to the combined sewer system per rule 567-62.3(2)"d". A decision by senior staff is needed to grant a relaxation from this requirement.
4. The flows to the facility exceeded the design flow limit 6 out of 37 months examined. The design BOD load to the facility was exceeded 10 months out of the 37 months examined. The facility did not achieve consistent compliance with the equivalent to secondary limitation of 45 mg/L BOD. Rule 567-62.3(3)"e" requires that the facility not receive hydraulic or organic loads that keep it from consistently meeting equivalent to secondary limits.

#### Recommendation:

1. The facility does not qualify for equivalent to secondary as per Rule 567-62.3(3).
2. The City should upgrade the facility to either enable it to be operated as a controlled discharge lagoon with 180 day storage capacity as per current design standards or request a

standard at the 95th percentile. It is the contention of the City that the 95th percentile does not come into play at all in the eligibility standards of the treatment equivalent to secondary and that the City merely must show that it can "consistently comply" with the effluent limitations set forth under the treatment equivalent to secondary standards. (The 95th percentile is a consideration only upon permit adjustments to determine if more stringent limitations should apply because the treatment facility has shown it can "consistently achieve" these more stringent limitations).

Attached as Exhibit E is the effluent data from the State reports for the years 1985, 1986, and 1987. The key analysis of this fifth and final criteria is to analyze for the CBOD and SS effluent limitations. Under treatment equivalent to secondary these would be as follows:

CBOD 30 day avg. not to exceed 40 mg./l  
SS 30 day avg. not to exceed 80 mg./l

At first glance, the reporting criteria under Exhibit E seemed to indicate the City exceeding its CBOD limitations on three out of the previous 30 months analyzed by the Department.

Exhibit F is the same effluent data utilizing effluent levels at the time of discharge only for the years 1985, 1986, and 1987. The City considers these more reliable and the analysis of the key effluent limitations because only at time of discharge is the effluent quality important. It can be readily noted that under Exhibit F for only one month in the year 1985, one month in the year 1986, and none in 1987 does the City's CBOD discharge exceed the criteria of 40 mg./l (as adjusted from a BOD of 45 mg./l). When one examines the SS effluent quality, it can be seen from Exhibit F that the City exceeded the criteria limitation of 85 mg./l on only one occasion. Therefore, the City has been in compliance 94.4 percent of the time for the last 36 months as pertaining to CBOD effluent limitations and 97.2 percent of the time as pertaining to SS effluent limitations. This would certainly indicate consistent compliance.

All of the City's previous arguments of meeting TEST requirements, or any consideration that the City might even be close, have gotten absolutely no consideration



EXHIBIT "B"

2/3

INFLUENT DATA FROM STATE REPORTS

1986

[illegible]



## FLOW DATA - WAPELLO LAGOONS

1/2

10-27-87	FLOW METERS STA 1    STA 2 59,300   111,700	HOUE METERS STA 1    STA 2 59,400   107,100
108.6%	171,000	157,500
11-16-87	FLOW METERS STA 1    STA 2 238,100   294,800	HOUE METERS STA 1    STA 2 367,920   435,540
65.1%	522,900	803,460
11-24-87	FLOW METERS STA 1    STA 2 168,900   231,600	HOUE METERS STA 1    STA 2 216,720   299,880
77.5%	400,500	516,600
1-20-88	FLOW METERS STA 1    STA 2 100,500   151,100	HOUE METERS STA 1    STA 2 100,800   157,080
97.6%	251,600	257,880



EXHIBIT "E" 2/3  
EFFLUENT DATA FROM STATE REPORTS

✓ 986

MONTH	J	F	M	A	M	J	J	A	S	O	N	D	AVG
BODS m/1 AUG	53	37	34	20	40.5	18	43	24	32.5	40	30	162	32.3
BODS m/1 MAX	56	50	46	27	63	19	44	27	35	49	52	28	
SS m/1 AUG	12	18	25	35	36.5	40	60	59	75.5	59	48	25.5	41.1
SS m/1 MAX	15	21	30	37	37	44	79	65	76	94	79	30	
FLOW CALX1000 AUG	278	409	340	0	409	409	278	161	409	528	572	0	346
FLOW CALX1000 MAX	278	409	340	0	409	409	278	278	409	528	572	0	

ADM -1-1-1 cr  
June 1988

MINUTES  
ENVIRONMENTAL PROTECTION COMMISSION  
Wallace State Office Building  
Des Moines, Iowa  
June 20-21, 1988

The meeting of the Environmental Protection Commission was held at the Wallace State Office Building in Des Moines, Iowa on June 20 and 21, 1988 convening at 1:30 p.m. on Monday, June 20.

MEMBERS PRESENT

Catherine Dunn, Charlotte Mohr, Robert Schlutz, Nancy Lee Siebenmann, Donna Hammitt, Gary Priebe, Keith Uhl, Clark Yeager, Richard Timmerman (June 21).

MEMBERS ABSENT

Richard Timmerman (June 20)

ADOPTION OF AGENDA

The following items were added to the agenda:

- 10A. Proposed Contested Case Decision--Ernest and Kevin Gradert.
- 10B. Proposed Contested Case Decision--Francis Heaberlin.

Allan Stokes asked that Item 16, Final Rule--Chapter 39, Requirements for Properly Plugging Abandoned Wells, be deleted from the agenda as the Legislative Rules Review Committee requested and EIS statement for these rules and it will delay the Commission's action on them.

Chairman Schlutz stated that Item 8, Contested Case Appeal--City of Wapello, should continue to be tabled until the July, 1988 meeting.

Motion was made by Donna Hammitt to continue to table the Contested Case Appeal for the City of Wapello until the July meeting. Seconded by Gary Priebe. Motion carried unanimously.

Motion was made by Catherine Dunn to approve the agenda as amended. Seconded by Donna Hammitt. Motion carried unanimously.

ADOPTION OF MINUTES OF APRIL 25-26, 1988 AND MAY 16-17, 1988

The following correction was made to the minutes of April 25-26, 1988:

Page 28, line 28, "ore" should be changed to "more."

Motion was made by Nancy Lee Siebenmann to approve the minutes of April 25-26, 1988 as amended. Seconded by Charlotte Mohr. Motion carried unanimously.

Motion was made by Charlotte Mohr to approve the minutes of May 16-17 as presented. Seconded by Catherine Dunn. Motion carried unanimously.

RFP RANKING BY SELECTION COMMITTEE

RANK	TITLE	CONTRACTOR	ADDRESS	CITY	ST	ZIP	CONTACT NAME	PHONE
1	Lundell System	Cherokee Co. SW	509 Ash St.	Cherokee	IA	51012	Norlyn Van Beek	712/722-3709
2	Composting Feas.	Lee Co. SW Mgt. Co.	P.O. Box 16	Ft. Madison	IA	52627	Ron Mace	319/372-6140
3	Hawarden Study	City of Hawarden	P.O. Box 231	Hawarden	IA	51023	Larry Milroy	712/552-2565
4	SW Volume Reduction	NW Ia SW Agency	RR 2 Box 174A	Sheldon	IA	51201	Dave Honkamp	
5	Grass & Leaf Reduction	City of W DSM	318 5th St.	W Des Moines	IA	50265	Ronne Rivas	515/223-3247
6	Waste Res. Recycling	Waste Res. Rec.	833 Brooks Rd.	Iowa Falls	IA	50126	Larry McDowell	515/847-3535
7	Demo Recycling	N. Iowa Vocational	1225 S. Harr.	Mason City	IA	50401	Howard Wilcox	515/423-3301
8	Ply. Co. Was. Red. Proj.	Ply. Co. SW Ag.	P.O. Box 904	Le Mars	IA	51031	Bruce Lancaster	712/546-6071
9	Carrull Recycling	New Hope Village	E. 18th St.	Carroll	IA	51401	Frank Hermen	712/792-5500
10	Sioux C. & Jebro Comp.	C. of Sioux City	P.O. Box 447	Sioux City	IA	51102	Steve Hoambrecker	712/279-6222
11	Grocery Recycling	Faraway Stores	P.O. Box 70	Boone	IA	50036	F.W. Beckwith	515/432-2623
12	The Eliminator	Trash Red. Sys.	2829 W.Pkw.	W Des Moines	IA	50265	Wilbur Bump	515/225-8811
13	Sludge & Yard Waste	Scott Co. Landfill	P.O. Box 563	Buffalo	IA	52728	Cindy Turkle	319/381-1300
14	Comprehensive SW Plan	W.C.IA SW Mgt Ass.	603 N. Adams	Carroll	IA	51401	Jim Ulveling	712/792-9532
15	Tire Tite Demo	Clarence Henze	RFD 1	Holland	IA	50642	Clarence Henze	319/824-6588
16	Waste Tire Incin.	Firestone T&R		Des Moines	IA		John Poage	515/243-1211
17	SW Minimization	City of Ames	125 S. 3rd St.	Ames	IA	50010	Arnold O. Chentland	515/239-5160
18	Indus. Waste Plas. Rec.	Plastic Rec. Inc.	RR 3 Box 182	Iowa Falls	IA	50126	Floyd Hammer	515/648-5073
19	Curbside Bulky Waste	City of Muscatine	1459 Wash. St.	Muscatine	IA	52761	Robert McDonald	319/263-8933
20	REUSE	Ray Bradley Hauling	118 N. 16th St.	Keokuk	IA	52632	Ray Bradley Jr.	319/524-3397
21	Curbside Pickup	Bett. Recyc. Comm.	City Hall	Bettendorf	IA	52722	Pat McLaughton	319/332-7203
22	SW Mgt. Proposal	S Iowa COG	P.O. Box 102	Creston	IA	50801	Tim Ostroski	515/782-8491
23	Waste Recycling	Waste Rec. Inc.	P.O. Box 242	Lime Springs	IA	52155	Seth Crabtree	319/566-2247
24	Transfer Feas. Study	Bi-State Plan. Comm.	1504 3rd Ave.	Rock Island	IL	61201	Gene Standaert	309/793-6300
25	Mason City Recycling	Mason City Rec.	P.O. Box 1534	Mason City	IA	50401	Dean Hess	515/423-1200
26	Comp. Disposal Plan	ECICOG	2nd Ave. & 1st	Cedar Rapids	IA	52401	Craig Sonksen	319/398-3664
27	Comp. SW Disposal Plan	Bi-State Plan. Comm.	1504 3rd Ave.	Rock Island	IL	61201	Denise Bulet	309/793-6300
28	Muskie Refuse	Muskie Refuse Ser.	P.O. Box 384	Muscat.	IA	52761	Debra Morgan	319/726-3613
29	Waste Red. Thru Rec.	CB Public Works	209 Pearl St.	Council Bluffs	IA	51503	Norm Jackson	712/328-4666
30	SW Incineration	Area Xv Plan. Comm.	P.O. Box 1110	Ottumwa	IA	52501	Al Hueton	515/684-6551
31	Feas. for Reg. Dev.	SIMPCO	P.O. Box 447	Sioux City	IA	51102	Dan Jensen	712/279-6286
32	Pelletization of Fly Ash	Iowa State Univ.	Dept. of CE	Ames	IA	50011	Carol Kilgor	515/294-8203
33	Recyc. Feas. Stud.	Iowans for Recyc.	2016 Hol. Blvd	Iowa City	IA	52240	Joseph Balkcom	319/364-3957
34	SW Rec. via Rail Trans.	INRCOG	209 W 5th St.	Waterloo	IA	50701	Rod Larson	319/235-0311
35	Fluid Bed Const. Mat.	Iowa State Univ.	Facil. Plan.	Ames	IA	50011	Richard Monson	515/294-5567
36	Tire Disposal	Tire Proc. Co.	1418 4th Ave.	Rock Island	IL	61201	James Bowers	309/788-2184
37	Engineers Report	Hall Engineering	P.O. Box 825	Centerville	IA	52544	John Bums	515/437-4477
38	Grav. Flow Sys.	City of Anamosa	107 S. Ford	Anamosa	IA	52205	Suzanne Marek	319/462-3473
39	Vol. Red./Recyc.	NIACOG	121 3rd St.	NW Mason City	IA	50401	Dave Sperry	515/423-0491
40	Feas. Study & Dem.	Jacob.-Westergard	105 S. 6th St.	Estherville	IA	51334	Richard Hopper	712/342-2447



### PUBLIC PARTICIPATION

Chairman Schlutz announced public participation at 3:30 p.m., Monday, June 20, 1988; no one requested to speak.

### CONTESTED CASE APPEAL -- STAN MOSER

James Combs, Division Administrator, Coordination and Information Division, presented the following item.

On November 3, 1987, the department issued administrative order 87-SW-26 to Stan Moser. That action assessed an administrative penalty and directed Mr. Moser to cease and clean-up alleged unpermitted solid waste disposal. That action was appealed and the matter proceeded to administrative hearing on March 7, 1988. The hearing officer issued the Proposed Findings of Fact, Conclusions of Law, and Order on April 12, 1988. The decision affirmed the department's order.

Mr. Moser has appealed this order to the Commission. The Proposed Decision and pertinent documents have been distributed to the Commissioners. The entire record, including hearing tapes and exhibits, are available for your review. The parties will be available to argue their respective positions and respond to your questions. You may then affirm the Proposed Decision, or modify or reverse it substituting your own findings of fact and conclusions of law based on your conclusions from your review of the record and legal argument.

Mike Murphy stated that Mr. Moser requested, on June 15, a copy of the tapes from the hearing officer's decision but that he has not received them yet. Therefore, Mr. Moser is asking that the matter be delayed. Mr. Murphy stated that he would not go along with a delay because Mr. Moser has had ample opportunity to request the tapes long before June 15; the hearing officer's decision was on April 12, 1988. Mr. Murphy had written Mr. Moser and advised that if he wanted any material it should be requested by May 27, 1988 to provide time to get it into the agenda package for June, 1988.

### APPOINTMENT -- STAN MOSER

Stan Moser stated that he has requested information from the department for his first hearing, and he has never received it. He added that he sent a money order last week and requested a copy of the hearing tapes. Mr. Moser said the tapes are important to him as he needs them to refresh his memory. Mr. Moser stated that he has never seen any garbage on his property and only occasionally, and temporarily, stockpiled old appliances. He added that he has never buried appliances there.

Mr. Moser stated that Officer Paul Michael of the Hudson Police Department, who presented testimony against him, has an "ax to grind." He explained that Officer Michael had, at one time, worked for his (Mr. Moser's) brother and was terminated. Mr. Moser also related that he had a previous suit against Officer Michael that was settled out of court. Mr. Moser concluded by asking that the Commission drop his case in its entirety.

Gary Priebe expressed concern that the only witness in this case has had a previous personal vendetta with Mr. Moser.

Discussion followed regarding the procedure to develop the rules, opportunities available through this program, and how to determine interest rates.

Keith Uhl stated that options for "flexible money use" should be included in the rules.

TED SHAPLER, IOWA FINANCE AUTHORITY (Speaker)

Ted Shapler, Iowa Finance Authority (IFA), addressed the Commission stating that his department is the one that is going to go out and get the bond market. He related that there has been a very good working relationship between DNR and IFA which will aid in receiving monies. A selection committee has been established to select a bond counsel and a bond underwriter. Selections will be made in July and, hopefully, bonds will be issued in late summer. Policy decisions will need to be made regarding interest rates. Mr. Shapler stated that there are a number of policy issues that need to be discussed, as they want to make sure that all rules mesh. He added that IFA personnel will occasionally attend future Commission meetings to keep the Commission informed.

Chairman Schlutz yielded the chair to Vice-Chairman Timmerman at 10:00 a.m., as it was necessary for him to leave the meeting at that time.

REFERRALS TO THE ATTORNEY GENERAL (Continued)

Keokuk Landfill, Inc.

Vic Kennedy, Government Liaison Bureau, displayed slide photos of the Keokuk Landfill showing activated carbon drainage, disposed rubber gaskets creeping out of the landfill, fly ash, pond at base of fly ash/carbon area, an unlocked gate, and equipment (with Keokuk name on it) which is used there. Mr. Kennedy stated that the photos were taken June 6, 1988.

Mr. Kennedy stated that referral is for handling of the closing of the landfill. He stated that Keokuk Landfill indicated last fall that they did not want a renewal permit. In late December, the department issued a closure order along with citations for some of the violations pointed out in the photos. Mr. Kennedy stated that Keokuk Landfill has not complied with the closure plans, and operation in connection with the plan. Also, no leachate control plans have been submitted. Substantial portions of the landfill did not have the final cover, and the gate has not been locked at all times. Mr. Kennedy related that this is a private landfill which is primarily used by the Hubinger Company and Sheller Globe Company, both of Keokuk. He stated that the department has kept Hubinger, Sheller Globe, and the owners of the land informed as to what is going on because of their potential liability in connection with this matter.

APPOINTMENT -- KEOKUK LANDFILL (CARL McMURRAY)

Carl McMurray, attorney representing Keokuk Landfill, addressed the Commission explaining financial problems that the company is experiencing. He stated that no toxic materials were dumped at the landfill. Mr. McMurray stated that there was an area where coal ash was dumped, an area for rubber scraps, and

Enforcement Report Update

The following new enforcement actions were taken last month:

Name, Location and Field Office Number	Program	Alleged Violation	Action	Date
Harv's Lakeside Tap, Davenport (6)	Drinking Water	Monitoring/Reporting - Bacteria	Order/Penalty	5/3/88
Conoco Gas & West Branch Inn, West Branch (6)	Drinking Water	Monitoring/Reporting - Bacteria	Order/Penalty	5/3/88
Clairmont Country Club, Clarion (2)	Drinking Water	Monitoring/Reporting - Bacteria	Order/Penalty	5/3/88
City of Neola (4)	Wastewater	Permit Condition Vio.- Discharge Limits	Order/Penalty	5/3/88
Solar Simplicity, Inc., aka R.J.S. Enterprises Corp. Burlington (6)	Air Quality	Operation Without Permit	Order	5/3/88
City of Marcus (3)	Drinking Water	MCL - Radioactivity	Order/Penalty	5/3/88
Hwy. #3 Mobile Home Park Waverly (1)	Drinking Water	Monitoring/Reporting - Radioactivity	Order/Penalty	5/3/88
Ripley Municipal Water Supply (4)	Drinking Water	Monitoring/Reporting - Bacteria	Order/Penalty	5/3/88
City of Dayton (2)	Drinking Water	Construction Without Permit	Order	5/3/88
City of Hospers (3)	Drinking Water	Construction Without Permit	Order/Penalty	5/3/88
First Place Lanes, Audubon (4)	Drinking Water	Monitoring/Reporting - Bacteria and Nitrate	Order/Penalty	5/3/88
Milo Chalfant, Bob Miller, Kurt Miller, James Laughlin, Webster City (2)	Solid Waste	Open Dumping	Order/Penalty	5/3/88
City of Waterloo (2)	Wastewater	Treatment Violations	Amendment to Order	5/3/88
Hardin Co. Sanitary Solid Waste Disposal Commission (2)	Solid Waste	Daily Operation	Amendment to Order	5/3/88
Blanchi-Mayrat Lagoon, Mt. Airy (5)	Wastewater	Monitoring/Reporting	Amendment to Order	5/9/88
Bill Keough, Fertile (2)	Air Quality	Open Burning	Order/Penalty	5/9/88
The Hayloft Tavern, Grant (4)	Drinking Water	Monitoring/Reporting - Bacteria	Order/Penalty	5/9/88
Boxholm Water Supply (5)	Drinking Water	Monitoring/Reporting - Bacteria	Order/Penalty	5/9/88
Bill Keough, Fertile (2)	Air Quality	Open Burning	Order/Penalty	5/19/88
City of Malcom (5)	Wastewater	Certified Operator	Order/Penalty	5/19/88
Dumont Auto Parts, Dumont (2)	Air Quality	Open Burning	Order/Penalty	5/19/88

DEPARTMENT OF NATURAL RESOURCES  
ENVIRONMENTAL PROTECTION COMMISSION  
CONTESTED CASES  
JUNE, 1988

DATE RECEIVED	NAME OF CASE	ACTION APPEALED	PROGRAM	ASSIGNED TO	STATUS
10-17-85	City of Savington	Administrative Order	NH	Nansen	Settlement offered to city 5-25-85.
1-25-86	Delwin Soil Service	Administrative Order	NH	Lands	Hearing continued; cleanup study progressing.
6-12-86	MMW - Clinton	Administrative Order	Air	Lands	Hearing continued.
10-29-86	Handi-Kemp Company, Inc.	Administrative Order	AB/WH/SH	Lands	Hearing officer's decision affirmed in part.
12-03-86	City of Huxford	Administrative Order	WE	Nansen	Hearing continued; settlement close.
12-11-86	Elaine Burns	Permit Condition	FP	Clark	Permit decision affirmed.
12-24-86	Francis Mosherlin	Administrative Order	FP	Clark	Briefing completed - awaiting decision.
5-12-87	Iowa City Registry NEP	Administrative Order	NH	Panose	Hearing held 11-03-87.
6-08-87	Willow Creek Dam/Zorile et al	Permit Issuance	FP	Clark	Negotiating before filing.
6-11-87	Thomas Lannon	Administrative Order	FP	Clark	Order upheld - appealed to EPC.
8-10-87	Great Rivers Corp	Administrative Order	NC	Lands	Clean-up proceeding.
8-17-87	City of Mapelle	Administrative Order	NH	Nansen	DMC met with City. 6/28 EPC
9-17-87	Brandert, Kevin and Ernest	Administrative Order	AG	Lands	Hearing held 5-27-88. Decision pending.
10-22-87	University Park	Administrative Order	NH	Nansen	Hearing continued. Settlement close.
12-07-87	Stan Moser	Administrative Order	SH	Murphy	Proposed decision 4-12-88; appealed.
12-11-87	Pinkus Landfill	Permit Revocation	SH	Kennedy	Settlement negotiations.
12-18-87	Belmore Co. Cons. Cit. (EPC)	Permit Issuance	NR	Clark	Appears it will be dismissed.
12-31-87	City of Tipton	Administrative Order	NH	Nansen	Received information.
12-31-87	Wilfred Hufee	Administrative Order	NH	Murphy	Negotiating before filing.
1-18-88	First Iowa State Bank	Administrative Order	SH	Kennedy	Continued. Settlement pending.
1-22-88	EBP, Fort Dodge	NPDES Permit	NH	Nansen	Negotiating before filing.
2-04-88	Beaverdale Heights, Woodman; Moulton, Hills	Administrative Order	SH	Lands	Plans approved. Continued pending resolution.
2-05-88	Warren County Breton Bank	Administrative Order	UT	Lands	Phase I complete. Additional investigation necessary.
7-10-88	Lehigh Clay Products	Administrative Order	NC	Lands	Consent order. Appeal dismissed.
7-22-88	Anona	Tax Certification Denial	AB/WH	Lands	Appealed. Request for additional information.
7-29-88	Lynn Henningson Feedlot	Administrative Order	WH	Murphy	Negotiating before filing.
8-01-88	Clays Folded	Administrative Order	FP	Clark	Hearing scheduled for 6-28-88.
8-01-88	Hotel Grinnel	Administrative Order	NH	Nansen	Hearing continued. Negotiating.
8-11-88	Land O'Lakes, Inc.	Administrative Order	NH	Murphy	Negotiating before filing.
8-28-88	Mary Brooks, Reginald Brooks, Gordon Brooks	Administrative Order	FP	Clark	Hearing set for 7-17-88.
8-18-88	Shirley Lakeside	Administrative Order	WE	Murphy	Negotiating before filing.
8-11-88	Cassidy Bus & West Branch Inn	Administrative Order	WE	Murphy	Now case. Hearing set for 7-24-88.
8-16-88	Peepers, City of	Administrative Order	WE	Murphy	Now case. Hearing set for 7-27-88.
8-16-88	Harwood, City of	Administrative Order	NH	Lands	Negotiating before filing.
8-24-88	EBP, Columbus Junction	NPDES Permit	NH	Nansen	Now case.

ENVIRONMENTAL PROTECTION COMMISSION

Item 3

Decision

OFFICE LEASE RENEWAL -- REGION 4

The Environmental Protection Commission will be requested to approve a renewal of an office lease for Regional Office #4 of the Field Evaluation and Emergency Response Bureau located in Atlantic, Iowa.

The current landlord has proposed to renew present lease for a period of three years. The total cost is \$1,032 per month, approx. cost of \$6.14 per square foot. The office space houses 2012 square feet plus. The proposal includes all costs for electricity, heat, air-conditioning, taxes, water, janitorial, and trash disposal. Also, the landlord will repaint and clean all carpets.

John Beamer  
6-3-88

(103.MIN/sc)

ENVIRONMENTAL PROTECTION COMMISSION

ITEM

6

DECISION

CONTRACT--DEVELOPMENT OF GROUNDWATER EDUCATION MATERIALS FOR JUNIOR HIGH SCIENCE

It is recommended that the Commission authorize the department to contract with six educators to develop groundwater education materials for junior high science. These individual contracts and a 28-E agreement with the Department of Education (DE) will replace a DE contract approved by the EPC in April. As the DE contract was finalized, it was found that, due to the summer absence of key DE personnel, it would be more effective and efficient for the DNR to contract with individual educators, rather than the DE contract with individuals. There will be no change in the total amount of money for this project. The six educators include: Sharon Johnston, Webster City; Joe Moore, Luana; Don Perschau, Des Moines; Ken Thompson, Marshalltown; Jack Troeger, Ames; and Jan Wehlert, Iowa City.

Gail George  
June 6, 1988

This resulted in three violations of the 45 mg/L average equivalent to secondary biological oxygen demand limit and two violations of the 80 mg/L average equivalent to secondary suspended solids limit. The percent compliance for these parameters was 92 and 95 percent respectively. Consistent compliance was determined by the hearing officer to be 95 percent.

Therefore the City of Wapello is directed to upgrade its wastewater treatment facility to enable it to meet standard secondary treatment limits. The City has the option of upgrading the facility as a controlled discharge lagoon with 180 day storage for Spring and Fall discharges, or upgrade it as a continuous discharge lagoon. However a wasteload allocation must be requested should the City decide to upgrade it as a continuous discharge lagoon. Fecal coliform and total residual chlorine limits may be added to the discharge permit by a wasteload allocation for a continuous discharge lagoon. Addition of dechlorination equipment may be necessary in order to meet the total residual chlorine limit. More frequent monitoring of the effluent will be required for a continuous discharge lagoon than for a controlled discharge lagoon.

Should you have any questions concerning the Department's determination please contact Charles Furrey at 515/281/4067.

Sincerely,



Allan E. Stokes  
Administrator  
Environmental Protection Division

AS:cwf

cc: Field Office 6

wasteload allocation for a continuous discharge facility and upgrade to meet equivalent to secondary or standard secondary limits.

3. Consideration for the combined sewer system should be given in changing the 65% removal requirement for BOD. The City had 3 violations out of 37 months. A decision by senior staff to grant this is needed.

CWF:cwf

ATTACHMENT

cc: Field Office 6



from the Department as the Department has consistently maintained the facility was "hydraulic or organically overloaded." The City contends this is an arbitrary decision on the part of the Department for which it has no basis either statutorily nor by any documentation. Nowhere in the Departmental rules does there appear a definition of hydraulic or organic overloading. Both of these appear to be self-serving definitions which cannot be defined in and of themselves. The reason is that overloading in either a hydraulic or organic sense are important only as it would pertain to the quality of the effluent being discharged. If the results of the effluent quality--CBOD, SS, and percentage removal--are within the mandated limitations, it would not appear that a facility is hydraulic or organically overloaded. The City of Wapello has calculated each of these effluent quality limitations based upon flows in and out of the lagoon system and have been able to "consistently comply" with the limitations. Therefore, how can one arbitrarily say the system is hydraulically or organically overloaded if it is achieving compliance.

We believe the Department has misinterpreted the design of this facility itself. At times the Department has indicated the facility is hydraulically overloaded merely because it does not meet the ideal detention time of 180 days. This system was never designed for such detention time. Furthermore, the Department at some point argues that the system is designed for either an average or maximum flow of 415,000 gallons per day with a detention time of 60 days. Again, we contend this is not the true nature of the facts. It has been presented by the City that in the construction of this facility and at an inflow rate of approximately 415,000 gallons per day, the facility will have an average detention time of 60 days. At no point was this indicated to be an average or maximum design for the facility.

#### IV.

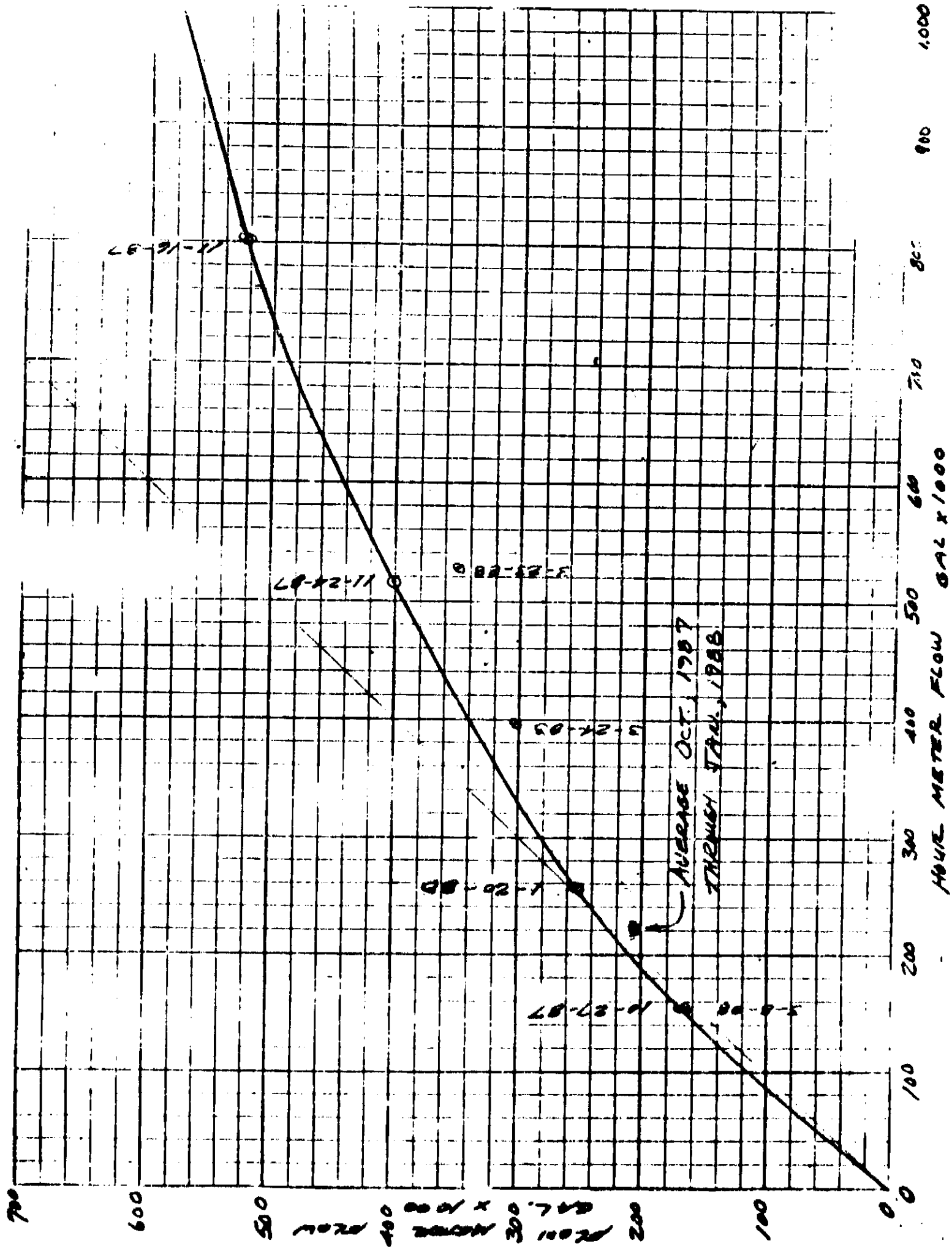
So that the Department does not believe the City of Wapello is merely ignoring any efforts to improve its treatment works, attached as Exhibit G are rehabilitation concepts for the City's waste water treatment facility. These include the fact the City has recently installed flow meters to accurately measure the influent to the system. The City anticipates similar rehabilitation to accurately measure the effluent from the system.



EXHIBIT "B" 3/3

### INFLUENT DATA FROM STATE REPORTS

[illegible]





**IOWA CONCRETE PRODUCTS CO. • AMES, IOWA • 50010 (515) 232-5833**

EXHIBIT "E"

3/3

## EFFLUENT DATA FROM STATE REPORTS

1987

[illegible]

Chairman Schlutz inquired about the status of the landfill fluff situation.

Allan Stokes stated that a letter has been sent to salvage dealers and landfill operators clarifying the department's position, and that of EPA, in regards to fluff.

#### OFFICE LEASE RENEWAL, REGION 4

Stan Kuhn, Division Administrator, Administrative Services Division, presented the following item.

The Environmental Protection Commission will be requested to approve a renewal of an office lease for Regional Office #4 of the Field Evaluation and Emergency Response Bureau located in Atlantic, Iowa.

The current landlord has proposed to renew present lease for a period of three years. The total cost is \$1,032 per month, approx. cost of \$6.14 per square foot. The office space houses 2012 square feet plus. The proposal includes all costs for electricity, heat, air-conditioning, taxes, water, janitorial, and trash disposal. Also, the landlord will repaint and clean all carpets.

Motion was made by Catherine Dunn to approve the Office Lease Renewal for Region 4 as presented. Seconded by Gary Priebe. Motion carried unanimously.

#### COMPUTER EQUIPMENT ACQUISITION FOR WATER QUALITY PLANNING SECTION

Stan Kuhn, Division Administrator, Administrative Services Division, presented the following item.

The department requests approval for the use of EPA funds to purchase computer equipment that will be used by Water Quality Planning staff assigned to the nonpoint source (NPS) pollution control program. Activities include the tracking of water quality assessment results, water quality modeling to prioritize NPS pollution problems, and report preparation to fulfill reporting obligations, as described below.

- NPS Assessment Results: water quality information on waterbodies in need of NPS management is maintained in a data base. Data on NPS pollutants is tracked along with the best management practices (BMPs) and NPS control measures that will be undertaken to reduce pollutant loads. The data will be used to evaluate NPS control programs and for annual reporting to EPA under Section 319.
- NPS Controls/Clean Lakes Project Tracking: building upon the NPS assessment data base, this system will include more detailed information for waterbodies that are candidates for control programs. The data will be used to establish priorities for NPS controls and Clean Lakes project sites, to track the implementation of these projects, and to report on their progress. Federal financial assistance programs will also be tracked so that their consistency with the state's NPS control program can be evaluated and agency responses prepared.
- Water Quality Modeling: water quality modeling will be done to provide information for prioritizing NPS problem areas. The hydrologic models to

Ms. Hay reported that the department received 40 grant proposals and 28 of these were for demonstration projects. Oil overcharge fund monies are funding the grants. There is currently between \$510,000 and \$515,000 available to fund the projects. Ms. Hay stated that the Energy Fund Disbursement Council will meet Wednesday and will then make their decision as to which grants should be approved. Contract negotiations will follow the final decision on grants and will be brought before the Commission for approval.

This was an informational item; no action was required.

#### PROPOSED CONTESTED CASE DECISION -- ELOISE REESE

James Combs, Division Administrator, Coordination and Information Division, presented the following item.

On November 14, 1986, the department issued Flood Plain Permit FP-86-181 to Eloise Reese. That action authorized maintenance of a previously constructed levee system with the stipulation that it be partially degraded to specified elevations. That action was appealed, and the matter proceeded to administrative hearing on March 8 and 9, 1988. The hearing officer issued the attached Proposed Findings of Fact, Conclusions of Law, and Order on May 20, 1988. The decision affirms the department's permit, as issued.

Either party may appeal the proposed Decision to the Commission. In the absence of an appeal, the Commission may decide on its own motion to review the Proposed Decision. If there is no appeal or review of the Proposed Decision, it automatically becomes the final decision of the Commission.

Mr. Combs briefed the Commission on the history of this case.

Mike Murphy, Government Liaison Bureau, stated that after the proposed decision was issued, the appellant requested a re-hearing. He distributed a copy of the request and explained that the Commission does not have to rule on it. However, if the Commission desires to do so, they may take action on it. After 20 days, if the Commission does not rule on it, it will expire.

The Commission expressed a desire to table the item until the next day to allow them time to study the request.

Motion was made by Nancylee Siebenmann to table this item until Tuesday. Seconded by Catherine Dunn. Motion carried unanimously.

#### PROPOSED CONTESTED CASE DECISION -- ERNEST AND KEVIN GRADERT

James Combs, Division Administrator, Coordination and Information Division, presented the following item.

On August 28, 1987, the department issued Administrative Order 87-AQ-17 to Ernest and Kevin Gradert. That action assessed a penalty of \$500 and directed that open burning cease. That action was appealed, and the matter proceeded to administrative hearing on May 27, 1988. The hearing officer issued the attached Proposed Findings of Fact, Conclusions of Law, and Order on June 7, 1988. The decision affirmed the order, but reduced the penalty to \$150.

Discussion followed in regards to Mr. Michael being the only witness in this case.

Mike Murphy asked the Commission to consider how concern with only one witness would affect enforcement, especially in a rural area where department staff cannot be everywhere to make on-the-spot observations. He pointed out that the hearing officer questioned Mr. Moser carefully and made specific findings that Officer Michael was a credible witness.

Motion was made by Donna Hammitt to table, for 30 days, the Proposed Contested Case Decision for Stan Moser to allow Mr. Moser time to receive and review the hearing tapes. Seconded by Nancylee Siebenmann. Motion carried unanimously.

#### RECESS

Chairman Schlutz recessed the meeting at 4:05 p.m., Monday, June 20, 1988.

MEETING RECONVENES 8:30 A.M., TUESDAY, JUNE 21, 1988

#### NOTICE OF INTENDED ACTION -- CHAPTERS 20, 22, 26 AND 28, REVISIONS TO AIR QUALITY RULES (PM10)

Allan Stokes, Division Administrator, Environmental Protection Division, presented the following item.

EPA promulgated new air quality standards for particulate matter on July 1, 1987. As a result, the state must prepare and submit a new State Implementation Plan (SIP).

Last month, you reviewed the attached draft rules and a draft "Committal SIP" designed to meet this requirement with the least possible disruption of the existing program. EPA's Region VII staff has reviewed the draft rules and "Committal SIP." Their suggestions have been incorporated into these documents. Upon completion of the rulemaking cycle, the department will submit the adopted rules and committal SIP to EPA.

The Commission is asked to approve these documents for public hearing.

#### ENVIRONMENTAL PROTECTION COMMISSION [567] Notice of Intended Action

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission proposes to adopt amendments to its rules pertaining to the prevention, abatement and control of air pollution. Specifically, the Commission proposes to amend Chapter 20, "Scope of Title- Definitions- Forms- Rules of Practice;" Chapter 22, "Controlling Pollution;" Chapter 26, "Prevention of Air Pollution Emergency Episodes;" and Chapter 28, "Ambient Air Quality Standards." These amendments relate to the regulation of particulate matter which is less than or equal to ten micrometers in diameter or PM<sub>10</sub>.

In 1971, EPA promulgated primary and secondary national ambient air quality standards for particulate matter, measured as "total suspended particulate matter" or "TSP." The primary standards were set at 260 ug/m<sup>3</sup> 24-hour average not to be exceeded more than once per year, and 75 ug/m<sup>3</sup>, annual geometric mean. The secondary standard, also measured as TSP, was set at 150 ug/m<sup>3</sup>,

another area for the spent carbon. He added that the rubber shown in the photos was scraps that were dropped from the truck; it was not rubber coming to the surface, and everything is being covered. He stated that a tenant farmer left the gate open on the 6th of June when representatives of DNR were there. Mr. McMurray stated that a closure plan was completed, and to his understanding was mailed on May 4. To be sure that the department received it, another copy was mailed on June 2, 1988 to Pete Hamlin. Mr. McMurray stated that the landfill is being covered.

JOSEPH ROSE (Speaker)

Joseph Rose, joint owner of Keokuk Landfill, criticized the slide photos which were shown by Vic Kennedy in that they were not a true picture. He stated that the rubber shown on the road fell from a scraper; the ashes had been soaked down with water; the water in the pond is clear, but tree shadows make it look muddy. Mr. Rose added that 20,000 yards of dirt have been moved to cover the landfill. He stated that without funds to have the work done he is doing it himself, and it will be completed in two months.

Richard Timmerman asked if a leachate plan was submitted to the department.

Mr. McMurray stated that a leachate plan has not yet been submitted to the department; only a closure plan has been submitted.

Vic Kennedy stated that he checked with Pete Hamlin's staff this morning and they were not aware of a closure plan being received by the department.

RON WELLS (Speaker)

Ron Wells, General Manager of Engineering with Hubinger Company, stated that he was present to answer questions or offer a description of materials. He stated that the material that had been discussed is spent carbon for which they have a special waste authorization permit. He stated that EPA toxicity tests have been run each year and the materials are nontoxic. Lee County Landfill is now using Hubinger Company's ash to fill in an old landfill.

Keith Uhl asked if staff is attempting to also refer the owners individually.

Mike Murphy explained that Keokuk Landfill, Inc. is primarily responsible and they are being referred, but notice had been given to the owners of the land last fall advising them of potential liability.

Discussion followed regarding whether or not Keokuk Landfill complied with the requirement for a closure plan.

Motion was made by Nancylee Siebenmann to table the referral for Keokuk Landfill, Inc. for 30 days to learn whether the closure plan submitted contains the criteria, including a leachate plan, to meet the department's expectations. Seconded by Keith Uhl. Motion carried unanimously.



Name, Location and Field Office Number	Program	Alleged Violation	Action	Date
Winnebago Industries, Inc. Forest City (2)	Air Quality	Construction Without Permit	Order/Penalty	5/23/88
City of Lake Mills (2)	Drinking Water	Construction Without Permit	Order	5/23/88
Wiltgen Construction Co., Calmar (1)	Solid Waste Air Quality	Open Dumping Open Burning	Order/Penalty	5/23/88
Jesco's Steakhouse Lounge, Castana (4)	Drinking Water	Monitoring/Reporting - Bacteria & Nitrate	Order/Penalty	5/31/88
Superior-Ideal, Inc. Oskaloosa (5)	Wastewater	Pretreatment	Order/Penalty	5/31/88
Ernest Nelson, Rowan (2)	Solid Waste	Open Dumping	Order/Penalty	5/31/88

#### Summary of Administrative Penalties

The following administrative penalties are due:

NAME/LOCATION	AMOUNT	DUE DATE
*Shelter Shield (Buffalo Center)	\$1,000	12-03-86
*Cedar Hills Apartments (Dubuque)	1,000	12-29-86
*City of Dysart	400	3-13-87
*JTM Indust./MacDade/Leamer (Pleasant Valley)	1,000	8-12-87
*Big Rock Tap	660	9-21-87
*Twelve Mile House (Bernard)	339	10-28-87
*OK Lounge (Marion)	448	11-01-87
*City of Sheldon	900	1-02-88
Richard Davis (Albia)	1,000	2-28-88
*Ellie's Bar and Grill (Grand River)	515	3-05-88
**Don Scribner (Washua)	1,000	3-28-88
**Elings/Catron/Frey (Des Moines)	400	4-15-88
Camp Okoboji	230	4-22-88
White Consolidated Industries (Webster City)	500	4-30-88
**Pleasant Creek Estates (Shellsburg)	200	4-30-88
Lake Hendricks Park (Howard Co.)	50	5-09-88
Vernon Heights MHP (Cedar Rapids)	1,000	5-09-88
DeWitt Moose Lodge (DeWitt)	550	5-16-88
Fred Iben (Monticello)	100	5-20-88
63-180 Truckstop (Potosi)	1,000	5-21-88
Linn Hollow MHP (Washington)	75	6-01-88
*Chico's Supper Club (Burr Oak)	954	6-10-88
**David Francy (New London)	400	6-10-88
**Lawrence Payne (Ottumwa)	525	6-15-88
Nike's Prairie Home (Ollie)	100	6-16-88
First Place Lanes (Audubon)	1,000	7-05-88
HWY #3 Mobile Home Park (Waverly)	200	7-05-88
Clear View Acres Store (Delhi)	230	7-11-88

\*Referred to the Attorney General

\*\*On Payment Schedule

Richard Timmerman reported that, in relation to the Rulemaking Status Report regarding Landfill Monitoring Rules, a committee has been formed to study the rules. Mr. Timmerman provided the names of the committee members and mentioned that each member has received a copy of the proposed rules for study. The committee will meet sometime in July.

Allan Stokes presented a status report of protected streamflow in Iowa in relation to dry weather. He also distributed a written report showing current streamflow conditions.

ADDRESS ITEMS FOR NEXT MEETING

None

NEXT MEETING DATES


August 15-16, 1988

September 19-20, 1988

October 17-18, 1988

ADJOURNMENT

With no further business to come before the Environmental Protection Commission, Vice-Chairman Timmerman adjourned the meeting at 11:15 a.m., Tuesday, June 21, 1988.

  
Larry J. Wilson, Director

  
Charlotte Mohr, Secretary

(6-88.MIN/sc)

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 4

DECISION

COMPUTER EQUIPMENT ACQUISITION FOR WATER QUALITY PLANNING SECTION

The Department requests approval for the use of EPA funds to purchase computer equipment that will be used by Water Quality Planning staff assigned to the non-point source (NPS) pollution control program. Activities include the tracking of water quality assessment results, water quality modeling to prioritize NPS pollution problems, and report preparation to fulfill reporting obligations, as described below.

-- NPS Assessment Results - water quality information on waterbodies in need of NPS management is maintained in a data base. Data on NPS pollutants is tracked along with the best management practices (BMP's) and NPS control measures that will be undertaken to reduce pollutant loads. The data will be used to evaluate NPS control programs and for annual reporting to EPA under Section 319.

-- NPS Controls/Clean Lakes Project Tracking - building upon the NPS assessment data base, this system will include more detailed information for waterbodies that are candidates for control programs. The data will be used to establish priorities for NPS controls and Clean Lakes project sites, to track the implementation of these projects, and to report on their progress. Federal financial assistance programs will also be tracked so that their consistency with the state's NPS control program can be evaluated and agency responses prepared.

-- Water Quality Modeling - water quality modeling will be done to provide information for prioritizing NPS problem areas. The hydrologic models to be used predict pollutant loadings to surface and ground waters. A watershed-based model simulates flow, sediment and nutrient transport throughout a watershed so that problem areas can be identified or the potential benefits of BMP's can be evaluated. Model outputs will be presented graphically. It is also anticipated that the Geographic Information System will be used to provide data needed for modeling.

The hardware and software needed to support these tasks is listed below. The IBM PS/2 Model 80 will be used for the NPS water quality modeling and related GIS and graphics production activities. All four of the personal computers will be used by NPS staff for the tracking of NPS assessment results and control projects, and for preparation of reports.

The printing and hard copy graphics needs associated with all four computers will be served by two printers that are connected to each PC by a printer-sharing device. These two printers will also be attached through this device to the Section 106 personal computers whose acquisition was approved by the Environmental Protection Commission at its April meeting.

The Hewlett-Packard LaserJet printer has high letter quality and graphics capabilities. It will be used for final report drafts and

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ENVIRONMENTAL PROTECTION COMMISSION**

ITEM

7

INFORMATION

**TOPIC: Ranking of Proposals Under Solid Waste Grants Program**

The Waste Management Authority Division, along with a selection committee composed of a member from the Environmental Protection Division and the Energy and Geological Resources Division have ranked the proposals submitted under the Solid Waste Grant Program. The ranking is subject to approval from the Energy Fund Disbursement Council. When negotiated, all contracts over \$25,000 are subject to approval by the Commission.

A copy of the ranked proposals is attached.

Stu Schmitz  
Iowa Dept of Natural Resources

**ATTACHMENT**

June 7, 1988

78159DNR0004

**IOWA DEPARTMENT OF NATURAL RESOURCES**  
**Surface and Groundwater Protection Bureau**

**DATE:** April 29, 1988  
**TO:** Wayne Farrand, Darrell McAllister, Diana Hansen  
**FROM:** Charles W. Purrey  
**SUBJECT:** Wapello Equivalent to Secondary Treatment Determination

**Problem:**

The City of Wapello met with our staff April 21, 1988 and requested that we reconsider our denial of their request for equivalent to secondary treatment. At this meeting they presented an application and supporting documentation of eligibility for treatment equivalent to secondary. This information was presented after the hearing officer ruled in the Department's favor in denial of equivalent to secondary.

This memo will address the City's contention that its wastewater treatment plant is eligible for equivalent to secondary as per rule 567-62.3(3).

A. The City contends, as per rule 567-62.3(3)"a", that the CBOD and TSS effluent concentrations achievable through proper operation and maintenance of its treatment works exceed minimum level of effluent quality as set forth for secondary treatment. Monthly operating reports for December 1984 through February 1988, along with the information presented by the City during the April 21, 1988 meeting examined. CBOD was not considered in the analysis because all results reported by the City on the monthly operating reports were BOD. The following conclusions were drawn:

1. The City cannot consistently meet standard secondary effluent limitations.
2. The City's contention that its wastewater treatment facility is properly operated and maintained is questioned because it has failed to meet certain operation and monitoring requirements outlined in the two NPDES permits that were in effect during the period analyzed. Both permits, the one issued November 17, 1982 and the one issued February 19, 1987 required the facility to be operated using a storage/draw down method of operation, with the draw down to be accomplished during the spring and/or fall to take advantage of higher than average stream flows. However the monthly operating reports submitted by the City indicate the facility had monthly discharges except for December 1986 and February 1987. The City's report said the facility did not discharge in April 1986. However the April 1986 operating report showed that

IOWA DEPARTMENT OF NATURAL RESOURCES

APPLICATION FOR CONSIDERATION  
FOR EFFLUENT STANDARD KNOWN AS  
"TREATMENT EQUIVALENT TO SECONDARY"

Permittee:

City of Wapello  
City Hall  
Wapello, Iowa 52653

NPDES Permit No. 58-79-0-01

I. PURPOSE

The purpose of this presentation is to present an application and supporting documentation for consideration of eligibility for treatment equivalent to secondary treatment in terms of pollutant measurements as defined in Iowa Administrative Code, Chapter 567-62.3 (3).

Pursuant to applicable federal and state standards as set forth in the City's NPDES operating permit, we start from the premise that every publicly owned treatment facility shall meet the minimum levels of effluent quality as set forth in IAC 567-62.3 (1) (a) and (b). These define the minimum effluent levels as follows:

CBOD 30 day avg. 25 mg./l

SS 30 day avg. 30 mg./l

Percentage removal 30 day avg. not less than 65 percent

II. SPECIAL CONSIDERATIONS

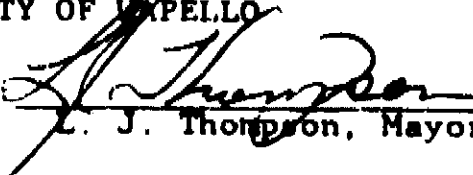
The City of Wapello has a combined sewer system, i.e. receiving flows from sewers which are designed to transport both storm water and sanitary sewage. The IAC recognizes that treatment works receiving flows from combined sewers may not be able to achieve the percentage removal requirement. As set forth in IAC 567.62.3 (2) the decision as to whether the percentage removal limit can even be defined, and if so, what level should be determined is to be made on a case by case basis. It is the City of Wapello's first contention that Wapello's treatment system with combined flows are such that a percentage removal requirement cannot be defined. Nonetheless, the City further contends it does provide significant biological treatment to the sewage process through its facility. We believe this issue will be more fully addressed under the requirement concerning "significant biological treatment" and the eligibility requirements for treatment equivalent to secondary as discussed in more detail in this report.

Based upon the foregoing, the City of Wapello believes its waste water treatment facility should be eligible for treatment equivalent to secondary and that minimum effluent limitations should be established accordingly.

Respectfully submitted,

CITY OF WAPELLO

By:

  
C. J. Thompson, Mayor

  
Ron Meyer, City Engineer



# WAPELCO, IOWA

MONTH	J	F	M	A	M	J	A	S	O	N	D	AVG.
-------	---	---	---	---	---	---	---	---	---	---	---	------

1965	AUG	240	298	420	338	317	265	252	267	244	266	351	341	300
	MAX	273	552	610	471	484	412	500	411	360	720	625	623	

11

1966	AUG	265	321	294	308	336	451	363	292	320	379	300	251	323
	MAX	397	680	391	492	735	665	615	571	580	1075	441	468	

EXHIBIT "C"

1967	AUG	204	197	230	243	231	207	203	255	211	190	226	208	217
	MAX	267	328	546	569	407	346	510	1000	311	290	523	542	

CALCULATED ACTUAL INFLUENT FLOW  
G.P.O. X 1000







EXHIBIT "B" 1/3  
INFLUENT GWA - DISCHARGE ONLY  
1985

MONTH	J	F	M	A	M	J	J	A	S	O	N	D	AVG
BOOB mg/l AUG	19	29	15.3	12	24	42	36	48	40	37	20.6	23	28.8
BOOB mg/l MAX	23	33	16	16	36	98	50	62	42	43	32	25	
SS mg/l AUG	29.5	36	42	25	37	41.5	49	58	64	58	41.5	13	41.2
SS mg/l MAX	34	42	60	47	45	60	65	60	78	81	73	17	
FLOW GALX1000 AUG	29	308	409	172	238	213	192	149	71	278	278	409	229
FLOW GALX1000 MAX	101	308	409	278	278	278	278	278	101	278	278	409	
DAYS OVERFLOW	9	28	31	30	31	30	31	31	21	31	30		

be used predict pollutant loadings to surface and ground waters. A watershed-based model simulates flow, sediment and nutrient transport throughout a watershed so that problem areas can be identified or the potential benefits of BMPs can be evaluated. Model outputs will be presented graphically. It is also anticipated that the Geographic Information System will be used to provide data needed for modeling.

The hardware and software needed to support these tasks is listed below. The IBM PS/2 Model 80 will be used for the NPS water quality modeling and related GIS and graphics production activities. All four of the personal computers will be used by NPS staff for the tracking of NPS assessment results and control projects, and for preparation of reports.

The printing and hard copy graphics needs associated with all four computers will be served by two printers that are connected to each PC by a printer-sharing device. These two printers will also be attached through this device to the Section 106 personal computers whose acquisition was approved by the Environmental Protection Commission at its April meeting.

The Hewlett-Packard LaserJet printer has high letter quality and graphics capabilities. It will be used for final report drafts and graphical presentations of model outputs (the latter requires the expanded memory). The dot-matrix IBM Proprinter will be used for internal memos, early drafts and, because it can accommodate wide paper, model outputs and data base reports.

This acquisition is 100 percent federally funded through an EPA grant.

#### Hardware:

<u>Description</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Total Cost</u>
1. IBM PS/2 Model 50-021 (10-MHz 80286 processor, 1MB RAM, one 20MB fixed disk, one 1.44MB 3.5-inch diskette drive)	3	\$ 2,520	\$ 7,560
2. IBM PS/2 Model 80-111 (20-MHz 80386 processor, 2MB RAM, one 115MB fixed disk, one 1.44MB 3.5-inch diskette drive)	1	7,700	7,700
3. IBM Color Monitor #4513	4	480	1,920
4. IBM 80287 math co-processor	1	370	370
5. IBM 80387 math co-processor	1	840	840
6. IBM PC 3270 emulation	2	790	1,580
7. Syugen 360KB/1.2MB 5.25-inch disk drive	1	325	325

Either party may appeal the Proposed Decision to the Commission. In the absence of an appeal, the Commission may decide on its own motion to review the Proposed Decision. If there is no appeal or review of the Proposed Decision, it automatically becomes the final decision of the Commission.

The Commission took no action; this has the effect of upholding the hearing officer's decision unless there is an appeal.

#### PROPOSED CONTESTED CASE DECISION -- FRANCIS HEABERLIN

James Combs, Division Administrator, Coordination and Information Division, presented the following item.

On November 25, 1986, the department issued Administrative Order 88-FP-04 to Francis Heaberlin. That action directed remediation of alleged floodplain excavations. That action was appealed, and the matter proceeded to administrative hearing on January 25, 1988. The hearing officer issued the attached Proposed Findings of Fact, Conclusions of Law, and Order on June 14, 1988. The decision reverses the department's order.

Either party may appeal the Proposed Decision to the Commission. In the absence of an appeal, the Commission may decide on its own motion to review the Proposed Decision. If there is no appeal or review of the Proposed Decision, it automatically becomes the final decision of the Commission.

The Commission took no action; this has the effect of upholding the hearing officer's decision unless there is an appeal.

#### REFERRALS TO THE ATTORNEY GENERAL

James Combs, Division Administrator, Coordination and Information Division, presented the following item.

The Director requests the referral of the following to the Attorney General for appropriate legal action. Litigation reports have been provided to the Commissioners and are confidential pursuant to Iowa Code section 22.7(4).

Keokuk Landfill, Inc. -- solid waste  
City of Glidden -- wastewater  
City of Ricketts -- wastewater  
Ottumwa-Wapello County Sanitary Landfill Commission -- solid waste  
Camp Okoboji (Milford) -- water supply/penalty  
DeWitt Moose Lodge -- water supply/penalty  
Richard and Sonja Davis (Albia) -- solid waste  
Vernon Heights Mobile Home Court (Cedar Rapids) -- water supply/penalty

#### City of Glidden

Mr. Combs briefed the Commission on the history of this case. He stated that staff is working on a consent decree with the City of Glidden. A referral is needed to formalize the consent decree.

Motion was made by Nancy Lee Siebermann for referral to the Attorney General's Office. Seconded by Catherine Dunn. Motion carried unanimously.

24-hour average not to be exceeded more than once per year. The department has adopted these standards and has implemented its air program in accordance with these standards.

The EPA has, pursuant to sections 108 and 109 of the Clean Air Act, reviewed and revised the health and welfare criteria upon which the primary and secondary particulate matter standards are based. On July 1, 1987, (52 Fed. Reg. 24634), EPA promulgated changes in the particulate standards which include: (1) replacing TSP as the indicator for particulate matter for the ambient standards with a new indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers ( $PM_{10}$ ); (2) replacing the 24-hour primary TSP standard with a 24-hour  $PM_{10}$  standard of 150  $\mu g/m^3$  with no more than one expected exceedance per year; (3) replacing the annual primary TSP standard with a  $PM_{10}$  standard of 50  $\mu g/m^3$ , expected annual arithmetic mean; and (4) replacing the secondary TSP standard with 24-hour and annual  $PM_{10}$  standards that are identical in all respects to the primary standards. The department proposes to adopt these changes.

The specific amendments to the department's rules include the addition of the definition of  $PM_{10}$  in rule 567--20.2 (455B) (IAC), the updating of the adoption by reference of PSD rules which are affected by the  $PM_{10}$  amendments, the amendment of the department's emergency air pollution authority as it relates to  $PM_{10}$ , and the revision of the ambient air quality standards.

The department will conduct \_\_\_\_\_ public hearings to receive comments on these proposed amendments. They will be held at the following times and places:

Written comments will be received by the department at the Des Moines address given above until 10 days following the date of the last hearing.

These proposed amendments are intended to implement Iowa Code section 455B.133.

The following amendments are proposed:

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ITEM 1. Rule 567--20.2(455B) is amended by including the following new definitions:

" $PM_{10}$ " means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by an EPA-approved reference method.

"Total suspended particulate" means particulate matter as measured by an EPA-approved reference method.

ITEM 2. Amend the first unnumbered paragraph of 567--22.4(455B) to read as follows:

567--22.4(455B) Special requirements for major stationary sources located in areas designated attainment or unclassified (PSD). Except as provided in subrule 22.4(1), the following federal regulations pertaining to the prevention of significant deterioration are adopted by reference, 40 C.F.R. subsection 52.21 as amended through August-7, 1988 July 1, 1987.

ITEM 3. Amend rule 567--22.4(455B) by adding the following new subrule:

22.4(4) Except as explained below, a permit may not be issued to any new major stationary source or major modification as defined in 567--22.5(455B) and 22.5(1)"a" and "b" if the source or modification would locate in any area designated attainment or unclassifiable for any national ambient air quality standard pursuant to section 107 of the Act, when the source or modification would cause or contribute to a violation of any national ambient air quality

# MONTHLY REPORTS

Allan Stokes, Division Administrator, Environmental Protection Division, presented the following item.

The following monthly reports are enclosed with the agenda for the Commission's information.

1. Rulemaking Status Report
2. Variance Report
3. Hazardous Substance/Emergency Response Report
4. Enforcement Status Report
5. Contested Case Status Report

Members of the department will be present to expand upon these reports and answer questions.

MONTHLY VARIANCE REPORT					5/31/88
No. Facility	Program	Engineer	Subject	Decision	Date
1 10 Army Ammunition Plant	Air Quality		Explosives	denied	05/03/88
2 Appomattox Co.	Flood Plain	Soil Conservation Sv	Store/Storage Capacity	approved	05/11/88
3 Springdale Br-Clon.Co.	Flood Plain	Drice, Petrides-Son.	Store/Storage Capacity	approved	05/11/88
4 Sonoma P'mdy-Water City	Wastewater Oper.		Monitoring frequency	denied	05/10/88
5 Corn Belt Sales-W'ville	Underground Tanks		Monitoring Well U/Loc	approved	05/03/88
6 BNC Johnson Tire -OR	Underground Tanks		Closure	approved	05/11/88
7 Milford Run. Utilization	Watersupply Const.	Steve Thornton-ACSB	Design Basis	approved	05/02/88
8 Maple Crest HSP-W.City	Watersupply Oper.	SAJ Water Conditioning	Water Monitoring	approved	05/19/88

NAME/LOCATION	AMOUNT	DUE DATE
The Hayloft Tavern (Grant)	960	7-12-88
Dumont Auto Parts (Dumont)	600	7-20-88
City of Malcom	500	7-20-88
Bill Reough (Fertile)	700	7-21-88
Winnebago Industries, Inc. (Forest City)	1,000	7-26-88
Rippey Municipal Water Supply	230	-----
Wiltgen Construction Co. (Calmar)	1,000	7-27-88
Ernest Nelson (Rowan)	500	-----
Superior-Ideal, Inc. (Oskaloosa)	1,000	-----
Jesco's Steakhouse Lounge (Castana)	600	-----

The following administrative penalties have been appealed:

NAME/LOCATION	AMOUNT
Handi-Klasp, Inc. (Webster City)	1,000
Iowa City Regency MHP	1,000
Thomas E. Lennon (Barnum)	700
Great Rivers Coop (Atavia)	1,000
City of Wapello	500
Wilfred McFee (Union Co.)	500
1st Iowa State Bank (Albia)	1,000
Gradert, Ernest and Kevin (Sibley)	500
Stan Moser (Hudson)	250
City of University Park	500
Cloyd Poland (Decoratur)	800
Lynn Mennenga Feedlot (Wright Co.)	500
Motel Grinnell	1,000
Land O' Lakes, Inc. (Ellsworth)	1,000
Harry Brocha (Dumont)	800
Conoco Gas and West Branch Inn (West Branch)	1,000
Mary's Lakeside Tap (Davenport)	200
City of Mospers	300
City of Marcus	1,000
Hilo Chalfant, et.al. (Webster City)	1,000
City of Neola	1,000

\*Referred to the Attorney General  
 \*\*On Payment Schedule

The following administrative penalties were paid in May:

NAME/LOCATION	AMOUNT
Country Corner Cafe (Pacific Junction)	451
**David Francy (New London)	400
Breitbach's Supper Club (Sherrill)	50
Beaver Hills Country Club (Cedar Falls)	75
Hills School (Iowa City)	50
Donald M. Caraway (Marion)	500
Braddyville, City of	100
**Lawrence Payne (Ottumwa)	105
City of Orchard	100
City of Boxholm	75
South Central Iowa Landfill Agency	800
City of Lynnvile	225

TOTAL \$7,921

The \$600.00 penalty assessed to Bianchi-Meyrat Lagoon of Des Moines was rescinded.

\* Referred to the Attorney General  
 \*\* On Payment Schedule

ADM-1-1-1 a  
June 1988

MEETING AGENDA  
ENVIRONMENTAL PROTECTION COMMISSION  
WALLACE STATE OFFICE BUILDING  
June 20-21, 1988

Meeting Convenes at 1:30 p.m., June 20, 1988 in the fourth floor conference room and reconvenes on June 21, 8:30 a.m.

Appointments:

City of Wapello ( <i>Table until July</i> )	2:30 p.m.
Break	3:00 p.m.
Carl Carlson, DALS	3:15 p.m.
Public Participation	3:30 p.m.
<i>Stan Moser</i>	3:45 p.m.

Meeting Reconvenes 8:30 a.m., June 21, 1988

Break 10:00 a.m.

Appointments:

Keokuk Landfill 9:30  
10:30 a.m.

1. Approval of Agenda.
2. Approval of Minutes of April 25-26, 1988 and May 16-17, 1988.
3. Office Lease Renewal, Region 4. (Kuhn) Decision.
4. Computer Equipment Acquisition for Water Quality Planning Section. (Kuhn) Decision.
5. Iowa State University Contract for Vocational and Agricultural Education Programs. (Kuhn) Decision.
6. Contract - Development of Groundwater Education Materials for Junior High Science. (Kuhn) Decision.
7. Solid Waste Grants Ranking. (Hay) Informational.
8. Contested Case Appeal--City of Wapello. (Combs) Decision.
9. Contested Case Appeal--Stan Moser. (Combs) Decision.
10. Proposed Contested Case Decision--Kleiss Reese. (Combs) Decision.
- 10a. Proposed Contested Case Decision--Kleiss and Kevin Graffert. (Combs) Decision.
- 10b. Proposed Contested Case Decision--A Farmer's Heubert Ltd. (Combs) Decision.
11. Referrals to the Attorney General. (Combs) Decision.
12. Groundwater Standards Hearings. (Combs) Informational.

*Tabled until July*



graphical presentations of model outputs (the latter requires the expanded memory). The dot-matrix IBM Proprinter will be used for internal memos, early drafts and, because it can accomodate wide paper, model outputs and data base reports.

This acquisition is 100% federally funded through an EPA grant.

#### HARDWARE:

DESCRIPTION	QUANTITY	UNIT COST	TOTAL COST
1. IBM PS/2 Model 50-021 (10-MHz 80286 processor, 1MB RAM, one 20MB fixed disk, one 1.44MB 3.5-inch diskette drive)	3	\$2,520	\$7,560
2. IBM PS/2 Model 80-111 (20-MHz 80386 processor, 2MB RAM, one 115MB fixed disk, one 1.44MB 3.5-inch diskette drive)	1	7,700	7,700
3. IBM Color Monitor #8513	4	480	1,920
4. IBM 80287 math co-processor	1	370	370
5. IBM 80387 math co-processor	1	840	840
6. IBM PC 3270 emulation	2	790	1,580
7. Sysgen 360KB/1.2MB 5.25-inch disk drive	1	325	325
8. Hewlett-Packard LaserJet Series II printer with expanded memory	1	2,800	2,800
9. IBM Proprinter XL24	1	740	740
10. Printer-sharing Device	1	1,000	1,000
Hardware Total			<u>\$24,835</u>

# RFP NUMBERS BY SELECTION COMMITTEE

LINE	TITLE	CONTRACTOR	ADDRESS	CITY	ST	ZIP	CONTACT NAME	PHONE
1	Landfill Spreads	Cherokee Co. SW	500 Ash St.	Cherokee	IA	51612	Marilyn Van Beek	712/722-3789
2	Composting Feas.	Lee Co. SW Reg. Co.	P.O. Box 14	Pt. Nebo	IA	52627	Ben Rice	319/372-6140
3	Resource Study	City of Muscatine	P.O. Box 231	Muscatine	IA	51623	Larry Wilroy	712/552-2545
4	SW Volume Reduction	SW Ia SW Agency	RR 2 Box 174A	Sheldahl	IA	51201	Dave Henshaw	515/223-3267
5	Grass & Leaf Composting	City of Udon	318 5th St.	Udon	IA	50205	Renee Rives	515/947-3535
6	Waste Res. Recycling	Waste Res. Inc.	253 Brooks Rd.	Leona Falls	IA	50126	Larry McDowell	515/423-3301
7	Waste Recycling	S. Iowa Vocational	1225 S. Hwy.	Maum City	IA	50401	Edward Wilcox	712/944-4871
8	Pty. Co. Wm. Res. Proj.	Pty. Co. SW Ag.	P.O. Box 906	Le Mars	IA	51631	Bruce Lancaster	712/792-5500
9	Carroll Recycling	New Hope Village	E. 10th St.	Carroll	IA	51401	Frank Hansen	712/279-6222
10	Shawn C. & John Corp.	C. of Sioux City	P.O. Box 447	Sioux City	IA	51102	Steve Henshaw	515/432-2623
11	Greenery Recycling	Farmer Stores	P.O. Box 78	Boone	IA	50036	F.W. Beckwith	515/225-8011
12	The Eliminator	Trash Res. Sys.	2829 W. Hwy.	Udon	IA	50205	Wilbur Bump	319/381-1300
13	Stumps & Yard Waste	Scott Co. Landfill	P.O. Box 543	Buffalo	IA	52728	Cindy Turkle	712/792-9532
14	Comprehensive SW Plan	U.C.I.A SW Reg. Ass.	605 W. Adams	Carroll	IA	51401	Jim Utveling	319/824-4588
15	Five Tyle Dam	Clarence Hovee	RR 1	Holland	IA	50842	Clarence Hovee	515/243-1211
16	Waste Tire Incin.	Firestone TBR		Des Moines	IA		John Pease	515/239-5140
17	SW Solidification	City of Ames	125 S. 3rd St.	Ames	IA	50010	Arnold O. Chertland	515/648-5073
18	Inciner. Waste Plan. Inc.	Plastic Res. Inc.	RR 3 Box 182	Leona Falls	IA	50126	Floyd Hamer	319/263-8953
19	Carroll Recycling	City of Muscatine	1459 Wash. St.	Muscatine	IA	52761	Robert McDonald	319/524-3397
20	SWME	Ray Bradley Incin	118 S. 14th St.	Leona Falls	IA	52632	Ray Bradley Jr.	319/332-7203
21	Carroll Recycling	Bett. Recyc. Com.	City Hall	Bettendorf	IA	52001	Tim Ostrofski	515/782-8491
22	SW Reg. Proposal	S Iowa CDE	P.O. Box 182	Creston	IA	52155	Seth Crabtree	319/546-2267
23	Waste Recycling	Waste Res. Inc.	P.O. Box 242	Leona Falls	IL	61201	Gene Standaert	309/793-6300
24	Transfer Feas. Study	Si-State Plan. Com.	1504 3rd Ave.	Rock Island	IA	50401	Dean Hess	515/423-1200
25	Waste City Recycling	Waste City Inc.	P.O. Box 1534	Maum City	IA	50401	Craig Sorken	309/398-3666
26	Comp. Disposal Plan	ECIDIS	2nd Ave. & Ia.	Center Rapids	IL	61201	Denise Bulet	309/793-6380
27	Comp. SW Disposal Plan	Si-State Plan. Com.	1504 3rd Ave.	Rock Island	IA	52761	Debra Morgan	319/726-3615
28	Mobile Refuse	Mobile Refuse Ser.	P.O. Box 306	Muscatine	IA	51503	Glenn Jackson	712/328-4666
29	Waste Res. Tyle Res.	CB Public Works	209 Pearl St.	Council Bluffs	IA	52501	Al Hutton	515/684-8551
30	SW Incineration	Area SW Plan. Com.	P.O. Box 1110	Ottumwa	IA	51102	Ben Jensen	712/279-6286
31	Feas. for Reg. Dev.	SWPCD	P.O. Box 447	Sioux City	IA	50011	Carol Kiger	515/294-8203
32	Publication of Fly Ash	Iowa State Univ.	Dept. of CE	Ames	IA	52248	Joseph Sullivan	319/344-3957
33	Recyc. Feas. Stud.	Iowa Recyc.	2016 Bel. Blvd	Leona Falls	IA	50701	Red Larson	319/235-8311
34	SW Res. via Ball Trans.	MECDS	289 W 5th St.	Waterloo	IA	50011	Richard Hansen	515/294-5567
35	Fluid Bed Comb. Res.	Iowa State Univ.	Facil. Plan.	Ames	IL	61201	James Boners	309/788-2184
36	Tire Disposal	Tire Pres. Co.	1418 4th Ave.	Rock Island	IA	52544	John Blum	515/437-4477
37	Engineers Report	Ball Engineering	P.O. Box 825	Centerville	IA	52205	Suzanne Harok	319/462-3473
38	Gen. Plan Sys.	City of Ames	107 S. Ford	Ames	IA	50401	Dave Sperry	515/423-0491
39	Vol. Res./Recyc.	BLACOS	121 3rd St.	Maum City	IA	51334	Richard Kopper	712/342-2647
40	Feas. Study & Res.	Jacob. Westergard	145 S. 4th St.	Estherville				

the pond level remained at a constant 5 foot level and effluent monitoring was reported for the month. Apparently the operator forgot to report effluent flow.

A further examination of the monthly operating reports show that the facility was operated as a continuous discharge facility for long periods of time without any storage. The facility had a monthly discharge for 35 out of 37 months examined. The number of days a discharge occurred each month ranged from 8 to 31. Eighteen of the 35 months reporting discharges, showed that discharges occurred daily.

Further examination of the monthly reports for the months of December 1984 through February 1988 reveal that out of the 205 days considered; a discharge was reported for 901 days (75%), and storage was reported for 304 days (25%). A total of 18 continuous discharge periods were reported during this time. The length of each period ranged from 1 to 368 days. An average continuous discharge period lasted 50 days.

There were 18 storage periods reported. The length of each storage period ranged from 5 to 31 days. An average storage period lasted 16.9 days. A discussion of why the facility cannot be operated in the controlled discharge mode of operation with spring and fall discharges will follow.

3. Each operating permit required that the discharge be monitored for BOD once per week with sampling to begin on the third day after discharge is initiated. Also a pre-discharge BOD sample was to be collected in the lagoon near the outlet structure.

The City did not regularly sample the discharge and the lagoon contents as required. The City waited from 0 to 11 days after discharge was initiated before a BOD sample was collected. The average wait before collecting a discharge sample was 4.6 days. The City did not always stick to once per week sampling of its discharge. Often the City let several days pass before another discharge sample was collected. The length of days between samples ranged between 4 and 22 days. The average wait was 8 days. The City sometimes would collect a sample and then let several days pass and then stop the discharge before collecting a sample.

The City also reported the in-cell BOD and TSS samples in the same columns for discharge samples on the monthly operating reports. The reports provide different columns for in-cell and discharge samples. This was pointed out by the City in its report. Therefore we recalculated the monthly average effluent BOD and TSS values using only the discharge samples. Consistent compliance was based upon these values rather than using both in-cell and discharge samples. However this left several monthly averages being based upon one effluent sample, because the discharge was only sampled one time during the month.

### III. TREATMENT EQUIVALENT TO SECONDARY TREATMENT

Section 567-62.3 (3) defines (or adjusts) the minimum levels of effluent quality for those facilities that can be considered eligible for "treatment equivalent to secondary treatment" (TEST). If a facility can so qualify, the minimum levels of effluent quality are as follows:

CBOD 30 day avg. 40 mg./l  
SS 30 day avg. 80 mg./l  
Percentage removal not less than 65 percent.

Each of the five criteria to determine the eligibility for TEST will be discussed below:

- A. Section 567-62.3 (3) (a). The CBOD and SS effluent concentrations consistently achievable through proper operation and maintenance of treatment works exceed the minimum level of effluent quality as set forth for standard secondary treatment.

There certainly is no disagreement that the City of Wapello's waste water treatment facility cannot consistently achieve standard secondary effluent limitations. From an engineering standpoint, the system was never designed to do so and there is a recognition of the rules, that a waste stabilization pond will like not meet the standard secondary requirements.

- B. Section 567-62.3 (3) (b). A trickling filter or waste stabilization pond is not the primary process.

The City of Wapello's treatment facility is exclusively a waste stabilization pond.

- C. Section 567-62.3 (3) (c). The treatment works provide significant biological treatment of municipal waste water.

Attached to this application marked Exhibit A is a summary of influent data with corresponding percentage removal success for the years 1985, 1986, and 1987. As can be seen from the exhibit, the City's waste water treatment facility has in fact provided significant biological treatment in that in each of the three years it has received a percentage removal criteria in excess of the 65 percent guideline.

EXHIBIT "A"  
SUMMARY OF OPERATION

1985:

AUG DAILY FLOW = 300,000 G.P.D.  
AVG INF. BODs = 141 mg/l  
AVG EFF. BODs = 28 mg/l  
% REMOVAL = 80 %  
AUG DETENTION TIME = 83 DAYS  
MIN DETENTION TIME = MARCH = 59 DAYS

1986:

AUG DAILY FLOW = 323,000 G.P.D.  
AVG INF. BODs = 122 mg/l  
AVG EFF. BODs = 35 mg/l  
% REMOVAL = 71 %  
AUG. DETENTION TIME = 77 DAYS  
MIN. DETENTION TIME = JUNE = 55 DAYS

1987:

AUG DAILY FLOW = 217,000 G.P.D.  
AVG INF. BODs = 146 mg/l  
AVG EFF. BODs = 28 mg/l  
% REMOVAL = 81 %  
AUG DETENTION TIME = 115 DAYS  
MIN DETENTION TIME = AUGUST = 98 DAYS

## EXHIBIT "D"

THE METHODOLOGY OF CALCULATING ACTUAL FLOWS

- A. GRAPHS BASED ON FOUR MONTHS, OCT., 1987, THROUGH JAN., 1988. MARCH, 1988 DATA ADDED LATELY.
- B. CURVES INTENTIONALLY DRAWN ON CONSERVATIVE SIDE. NOTE 4-MONTH AVERAGE FLOWS BELOW CURVES.



## FLOW DATA - WAPELLO LAGOONS

2/2

10-1-87 TO 2-1-88 (124 Days)

## FLOW METERS

STA 1 STA 2  
10,131,200 15,459,50025,590,700  
AVE = 206,377

STA. NO. 1 90.2 %

STA. NO. 2 95.2 %

TOTAL = 93.2 %

3-8-88

## FLOW METERS

STA 1 STA 2  
56,500 107,600

105.6 %

164,100

3-23-88

## FLOW METERS

STA 1 STA 2  
138,100 210,000

66.0 %

348,100

4-24-88

## FLOW METERS

STA 1 STA 2  
134,200 165,100

75.0 %

301,300

## HOUR METERS

STA 1 STA 2  
11,229,120 16,236,36027,465,480  
AVE = 221,495

## HOUR METERS

STA 1 STA 2  
55,440 69,000

155,400

## HOUR METERS

STA 1 STA 2  
241,920 295,000

527,520

## HOUR METERS

STA 1 STA 2  
211,680 195,000

397,320



IOWA CONCRETE PRODUCTS CO. • AMES, IOWA • 50010 (515)

EXHIBIT "F" 2/3  
EFFLUENT DATA - DISCHARGE ONLY  
1986

MONTH	J	F	M	A	M	J	J	A	S	O	N	D	AVG
BOD5 mg/l AUG	53	37	34		40.5	17	43	24	32.5	40	30		35.1
BOD5 mg/l MAX	56	50	46		63	19	44	27	35	49	52		
SS mg/l AUG	12	18	25		36.5	40	60	58.5	75.5	59	48		43.3
SS mg/l MAX	15	21	30		37	44	79	61	76	94	79		
FLOW GPD/1000 AUG	278	409	340	0	409	409	278	161	409	528	572	0	316
FLOW GPD/1000 MAX	278	409	340	0	409	409	278	278	409	528	572	0	
DAYS DISCHARGE	31	28	31	0	31	30	31	18	30	31	30		



8. Hewlett-Packard Laser-Jet Series II printer with expanded memory	1	2,800	2,800
9. IBM Proprinter XL24	1	740	740
10. Printer-sharing Device	1	1,000	<u>1,000</u>
Hardware Total:			\$ 24,835

Software:

<u>Description</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Total Cost</u>
1. IBM PC-DOS 3.3	4	80	\$ 320
2. dBase III Plus	4	490	1,960
3. Lotus 1-2-3	1	350	350
4. IBM FORTRAN Compiler	1	270	270
5. DisplayWrite 4	4	350	1,400
6. SignaPlot	1	395	<u>395</u>
Software Total:			\$ 4,695
TOTAL:			<u>\$ 29,530</u>

Motion was made by Catherine Dunn to approve the Computer Equipment Acquisition for Water Quality Planning Section as presented. Seconded by Gary Priebe. Motion carried unanimously.

IOWA STATE UNIVERSITY CONTRACT FOR VOCATIONAL AND AGRICULTURAL EDUCATION PROGRAM

Stan Kuhn, Division Administrator, Administrative Services Division, presented the following item.

The department requests approval to enter into a contract with ISU to develop educational materials and provide in-service training on groundwater to Iowa vocational agriculture teachers. The \$32,865 contract would be paid for from the oil overcharge account of the Groundwater Fund. Subjects to be covered in the program are as follows:

1. Hydrogeology
2. Agriculture and urban use of nitrogen fertilizer and pesticides
3. Underground tanks and pipelines
4. Hazardous substance handling and storage

City of Ricketts

Mr. Combs stated that this case has been resolved; therefore, no action is required.

Ottawa-Wapello County Sanitary Landfill Commission

Mr. Combs briefed the Commission on the history of this case.

Mike Murphy stated that since the agenda brief was prepared their representatives met with department staff and have arrived at some agreement; therefore, referral is requested to formalize the consent decree.

Motion was made by Catherine Dunn for referral to the Attorney General's Office. Seconded by Keith Uhl. Motion carried unanimously.

Camp Okoboji (Milford)

Mr. Combs briefed the Commission on the history of this case.

Motion was made by Catherine Dunn for referral to the Attorney General's Office. Seconded by Donna Hammitt. Motion carried unanimously.

DeWitt Moose Lodge

Mr. Combs briefed the Commission on the history of this case.

Motion was made by Catherine Dunn for referral to the Attorney General's Office. Seconded by Gary Priebe. Motion carried unanimously.

Richard and Sonja Davis (Albia)

Mr. Combs briefed the Commission on the history of this case.

Motion was made by Nancy Lee Siebenmann for referral to the Attorney General's Office. Seconded by Catherine Dunn. Motion carried unanimously.

Vernon Heisler Mobile Home Court (Cedar Rapids)

Mr. Combs briefed the Commission on the history of this case.

Motion was made by Charlotte Mohr for referral to the Attorney General's Office. Seconded by Catherine Dunn. Motion carried unanimously.

GROUNDWATER STANDARDS HEARINGS

James Combs, Division Administrator, Coordination and Information Division, presented the following item.

The Iowa Groundwater Protection Act mandated the department to hold six public hearings on what role, if any, standards should play in the protection of the resource. The department held 14 hearings. Approximately 550 people attended the hearings. In addition, written comments have been received from approximately 250 people.

standard. A major source or major modification will be considered to cause or contribute to a violation of a national ambient air quality standard when the air quality impact of the source or modification at any locality that does not or would not meet the applicable national standard would exceed the following significance levels:

	Averaging Time				
	Annual	24 Hrs.	8 Hrs.	3 Hrs.	1 Hr.
Pollutant					
SO <sub>2</sub>	1.0 ug/m <sup>3</sup>	5 ug/m <sup>3</sup>		25 ug/m <sup>3</sup>	
PM <sub>10</sub>	1.0 ug/m <sup>3</sup>	5 ug/m <sup>3</sup>			
NO	1.0 ug/m <sup>3</sup>				
CO			0.5 mg/m <sup>3</sup>		2 mg/m <sup>3</sup>

A permit may be granted to a major source or major modification as identified above if it reduces the impact of its emissions upon air quality by ambient sufficient emissions reductions to compensate for its adverse cause or contribute to a violation of any national ambient air quality standard. This section shall not apply to a major source or major modification with respect to a particular pollutant if the owner or operator demonstrates that the source is located in an area designated under Section 107 of the Act as nonattainment for that pollutant.

ITEM 4. Amend paragraph 567--22.5(1)"k" by adding "PM<sub>10</sub>: 15 typ" to the list of pollutants.

ITEM 5. Delete subrule 567--22.5(6).

ITEM 6. Amend rule 567--26.2(455B) by deleting all of subparagraphs 567--26.2(2)"a"(3), 26.2(2)"b"(3) and 26.2(2)"c"(3) and by renumbering the rule accordingly.

ITEM 7. Amend subparagraph 567--26.2(2)"a"(2) to read as follows:

(2) Fine particulate matter (PM-10) 9-9-89#-or-975 350 micrograms per cubic meter, 24-hour average.

(2) Fine particulate matter (PM-10) 5-8-89#-or-625 420 micrograms per cubic meter, 24-hour average.

ITEM 9. Amend subparagraph 567--26.2(2)"c"(2) to read as follows:

(2) Fine particulate matter (PM-10) 7-8-89#-or-875 500 micrograms per cubic meter, 24-hour average.

ITEM 10. Amend rule 567--28.1(455B) as follows:

567--28.1(455B) Statewide standards. The state of Iowa ambient air quality standards shall be the National Primary and Secondary Ambient Air Quality Standards as published in 40 Code of Federal Regulations Part 50 (1972) and as amended at 38 Federal Register 22384 (September 14, 1973), 43 Federal Register 46258 (October 5, 1978), and 44 Federal Register 8202, 8220 (February 9, 1979), and 52 Federal Register 24634-24669 (July 1, 1987).

Date

Larry J. Wilson, Director

SEA DEPARTMENT OF NATURAL RESOURCES  
ENVIRONMENTAL PROTECTION DIVISION  
REGULATORY STATUS REPORT  
JULY 1, 1988

PROPOSAL	DRAFT TO COMMISSION	OFFICE PUBLISHED	RULES REVIEW COMPLETION	REASON	FORWARD OF COMMENTS & RECOMMENDATIONS TO COMMISSION	RULES ADOPTED	RULES PUBLISHED	RULE EFFECTIVE
1. Ch. 4 - Zoning Procedures	2/15/88	2/22/88	4-19-88	---	5/16/88	5/16/88	06/15/88	07/20/88
2. Ch. 5 - Petition for Re-zoning	2/15/88	2/22/88	4-19-88	---	5/16/88	5/16/88	06/15/88	07/20/88
3. Ch. 7 - Contracted State Procedures	2/21/88	4/20/88		---				
4. Ch. 80, 82, 84, 85 RMS	4/20/88							
5. Ch. 82 - Air Quality Permitting	4/22/88	5/12/88		6/22/88 6/15/88 6/22/88				
6. Ch. 86 - Private Well Construction Permit	12/15/87	1/12/88	2/24/88	2/25/88 2/25/88 2/25/88	4/22/88	4/22/88	5/18/88	06/21/88
7. Ch. 90 - Well Plugging	2/21/88	4/21/88	2/16/88	2/12/88 2/12/88 2/16/88				
8. Ch. 90, 91 - Water Supply	4/22/88	5/12/88		6/12/88 6/14/88 6/15/88				
9. Ch. 97 - Grants to Counties	2/12/88	2/24/88	4/19/88	2/22/88 2/21/88 4/24/88	4/22/88	4/22/88	5/18/88	06/21/88
10. Ch. 99 Agricultural Drainage Wells					6/22/88			
11. Ch. 99 - Channel Changes	4/22/88	5/12/88		6/22/88				
12. Chs. 100, 102, 110 - Landfill Ground Water Monitoring	10/25/87	11/15/87	11/15/87	12/1/88 1/27/88 1/28/88	5/16/88	5/16/88	06/15/88	07/20/88

Continued

DEPARTMENT OF ENVIRONMENTAL SERVICES  
ENVIRONMENTAL COMPLAINTS DIVISION  
AIRWAYS SPECIAL SERVICES  
JUNE 1, 1988

Name, Location and Region Number	How or Reported	Program	Alleged Violation	NR Action	Status	Date
					Referred NR not filed. State intervention Action to dismiss granted/denied Filed satisfactory action	12/16/87 2/26/88 3/26/88 2/26/88 2/11/88
Golden Corporation Summit Bridge (4)	Residence Noise	Balance of Residence Substance	Referred to Abstract General			
AMCO, Inc. Shelburne (1)	Air Quality	Excess Emissions	Order	Referred		2/18/88
Big Rock Top Big Rock (4)	Drinking Water	Sanitation	Order/Penalty	Referred Not Filed		11/17/87 1/26/88
Shearh and Bell, Inc. Barnstable (4)	Solid Waste	Open Pile	Order	Referred Not Filed Not Filed Default Judgment \$7500 Action to not order overruled Funds exchanged (\$2,600)		2/26/87 4/23/87 6/22/87 10/30/87 2/10/88
Byrd, Robert E. Barnstable (2)	Residence	Prohibited Discharge	Order	Referred Not Filed Emergency Proceedings Emergency Proceedings		6/21/86 9/28/86
Barnes, Ben (1)	Flood Plain	Unauthorized Levee	Order	Referred		5/17/88
Under Hills Apts. Barnstable (1)	Water Supply	Unauthorized Operating without permit	Order/Penalty	Referred Not filed Action for Rev. Judgment Denied		2/26/87 4/27/87 12/20/87
Shelburne Architects II	Subsided	Air Quality	Open Pile	Referred to Abstract General	Referred General Notice (\$10,000)	10/30/87 5/12/88
Super. Beach Barnstable (2)	Residence	Excess Noise	Order	Referred		10/27/87
Barnstable, City of (4)	Residence	NR	Order	Referred		2/10/88
Barnstable, City of (4)	Subsided	Residence	Compliance Schedule	Order/Penalty	Referred Not Filed Not Filed Default Judgment Not Filed	6/21/87 9/28/87 5/26/88 6/19/88 11/20/88
Barnstable, City of (1)	Flood Plain	Unauthorized Fill	Referred to Abstract General	Referred Default Judgment Barnstable		1/12/88
Barnstable, City of (1)	Subsided	Solid Waste	Open Pile	Order/Penalty	Referred \$200 of \$1000 fine paid - Barnstable Rev	10/30/87 6/26/88
Barnstable, City of (1)	Solid Waste	Penalty/Fine	Not Filed	Referred Not Filed		11/19/87 2/26/88
Barnstable, City of (1)	Residence	Compliance Schedule	Order	Referred Not Filed		9/28/87 2/10/88
NR, Inc. (Amherst)	Residence	Prohibited Discharge	Order	Referred		11/12/87
Amherst, Town, Inc. Amherst (2)	Residence	Prohibited Discharge	Order	Referred Not Filed		7/21/86 1/26/87
Amherst, Town, Inc. Amherst (1)	Flood Plain	Unauthorized Fill	Order	Referred Not Filed Not Filed		6/21/87 10/30/87 11/12/87
Amherst, Town, Inc. (1)	Residence	Residence	Referred	Referred		9/28/87

**NEC Agenda - Page 2**

13. Monthly Reports. (Stokes) Informational.
14. State Revolving Fund. (Stokes) Informational.
15. Notice of Intended Action--Chapters 20, 22, 26, and 28, Revisions to Air Quality Rules (PM<sub>10</sub>). (Stokes) Decision.
- ~~Deleted~~ 16. ~~Final Rule--Chapter 39, Requirements for Properly Plugging Abandoned Wells.~~  
(Stokes) Decision.
17. Address Items for Next Meeting.

**NEXT MEETING DATES**

June 20-21, 1988

July 18-19, 1988

August 15-16, 1988

**SOFTWARE:**

DESCRIPTION	QUANTITY	UNIT COST	TOTAL COST
1. IBM PC-DOS 3.3	4	80	320
2. dBase III Plus	4	490	1,960
3. Lotus 1-2-3	1	350	350
4. IBM FORTRAN Compiler	1	270	270
5. DisplayWrite 4	4	350	1,400
6. SigmaPlot	1	395	395
Software Total			----- \$4,695
			*****
Total			\$29,530

IOWA DEPARTMENT OF NATURAL RESOURCES  
ENVIRONMENTAL PROTECTION COMMISSION

*Submitted  
July*

ITEM 8

DECISION

CONTESTED CASE APPEAL: CITY OF NAPELLO

On July 30, 1987, the department issued Administrative Order No. 87-WW-48 to City of Nappello. That action required the City to comply with an implementation schedule for wastewater facility improvements and to pay a \$500.00 penalty. That action was appealed and the matter proceeded to administrative hearing on October 27, 1987. The hearing officer issued the Proposed Findings of Fact, Conclusions of Law, and Order on January 13, 1988. The decision affirmed the Director's Order.

The City appealed this order to the Commission and that matter was presented to the Commission in March. The Commission tabled the case, allowing the City to present more information to the staff for consideration. That has been done and the staff has determined that its original decision stands. Thus, the Commission needs to resume consideration of the appeal, including the events since March.

The Proposed Decision, and pertinent documents have been distributed to the Commissioners. The entire record, including hearing tapes and exhibits are available for your review. The parties will be available to argue their respective positions and respond to your questions. You may then affirm the Proposed Decision, or modify or reverse it, substituting your own findings of fact and conclusions of law based on your conclusions from your review of the record and legal argument.

Nike Murphy  
Government Liaison Bureau  
June 2, 1988

88154DNR0023



B. The City states the treatment works provide significant biological treatment of municipal wastewater as per rule 567-62.3(3)"c". We conclude:

1. The data examined and the information presented by the City contradict concerning the facility's ability to provide significant biological treatment, that is 65% removal. BOD removal ranged from 55 to 91 percent with an average of 78%. Three of the 37 months examined had BOD percent removals less than 65%. The City maintains that BOD removal was always greater than 65%. The percent removal figures are based upon actual influent and effluent samples as described above. The Department may grant a lower percent removal requirement due to the combined sewer system as per rule 567-62.3(2)"d". The decision to grant this should be made by senior staff.

C. The City maintains that its treatment plant does not receive organic or hydraulic loadings which prevent it from consistently complying with equivalent to secondary limitations as per rule 567-62.3(3)"e". We conclude:

1. Information provided in the approved preliminary engineering report prepared by Donald C. Stouse, the approved plans, and the construction permit issued in 1966 were examined to establish facility design.

According to the engineering report the pond is sized for approximately 100 persons per acre at design loadings at a depth of between 2 and 5 feet. The design organic load is 370 lbs BOD per day. The design average flow is 415,000 gallons per day with a daily maximum of 1,000,000 gallons per day. The plans show that each pond cell has a 7.6 acre surface area when at a 3 foot depth. Surface areas for the 5 foot and 2 foot depths (normal operating depths for storage) were calculated to be 7.85 acres and 7.51 acres, respectively. The plans show the inner dike slopes to be 2/1. The calculated design storage capacity per cell between the design 2 foot and 5 foot operating depths is 7,506,180 gallons or 15,012,360 gallons total for the pond. (Please see the engineering report and approved plans for confirmation of these figures). At a design flow of 415,000 gallons per day only 36.2 days of storage capacity are available. This indicates the facility was never designed to operate as a controlled discharge facility with spring and fall discharges. As indicated above, the maximum storage time seen during the period in question was 31 days. The total volume available in the pond cells was calculated to be 24,838,388 gallons which gives a total detention time of 59.85 days at the design flow of 415,000 gallons per day. The cells would have to be completely drained to be able to store wastewater for 60 days at the design flow. Therefore the remaining analysis is based upon continuous flow operation as indicated by the design and current mode of operation.

2. The Department considers hydraulic and organic overloads to be occasions where the design flow and organic loads are ex-

Attached as Exhibit B is the influent data from the State report. Attached as Exhibit C is the actual calculated influent data. Exhibit D outlines the methodology of calculating these actual flows. It was the assumption of the City and as calculated in Exhibit D that prior to the installation of flow meters beginning in October, 1987, the City was reporting artificially high influent flows without a more accurate methodology. By utilizing the actual flow data since October, 1987, we have developed a relationship between the artificial data reported on the State reports and the actual data as calculated. We have then recomputed the actual flows to determine the actual influent flows into the treatment facility on a monthly basis for each of the last three calendar years.

As previously indicated, each of the years indicates an average percentage removal in excess of the 65 percent criteria. We clearly believe this is an indication of providing "significant biological treatment" under the rules as mandated, and particularly on a case by case basis in examining the City of Wapello's treatment facility. We know of no methodology to accurately report the percentage removal other than to do so on a yearly basis. To attempt to do so on a daily or monthly basis would be artificially skewed by whether the facility was discharging or not.

D. Section 567-62.3 (3) (d). The facility was not constructed since January 1, 1972.

This facility was constructed beginning in 1967 and was first utilized in 1968. Obviously it meets the design criteria of being constructed prior to January 1, 1972. It further fits within much of the special criteria discussed in the Congressional Report encouraging eligibility under the treatment equivalent to secondary treatment standards.

E. Section 567-62.3 (3) (e). The treatment works is one that does not receive organic or hydraulic loadings which prevent the facilities from consistently complying with Section 62.3 (3) (f), (g), and (h).

We believe the keywords in this particular criteria eligibility are the words "consistently complying." Much of the previous discussion with departmental officials have unfortunately focused upon some criteria



**EXHIBIT "B"**

13

## INFLUENT DATA FROM STATE REPORTS

1985

[illegible]

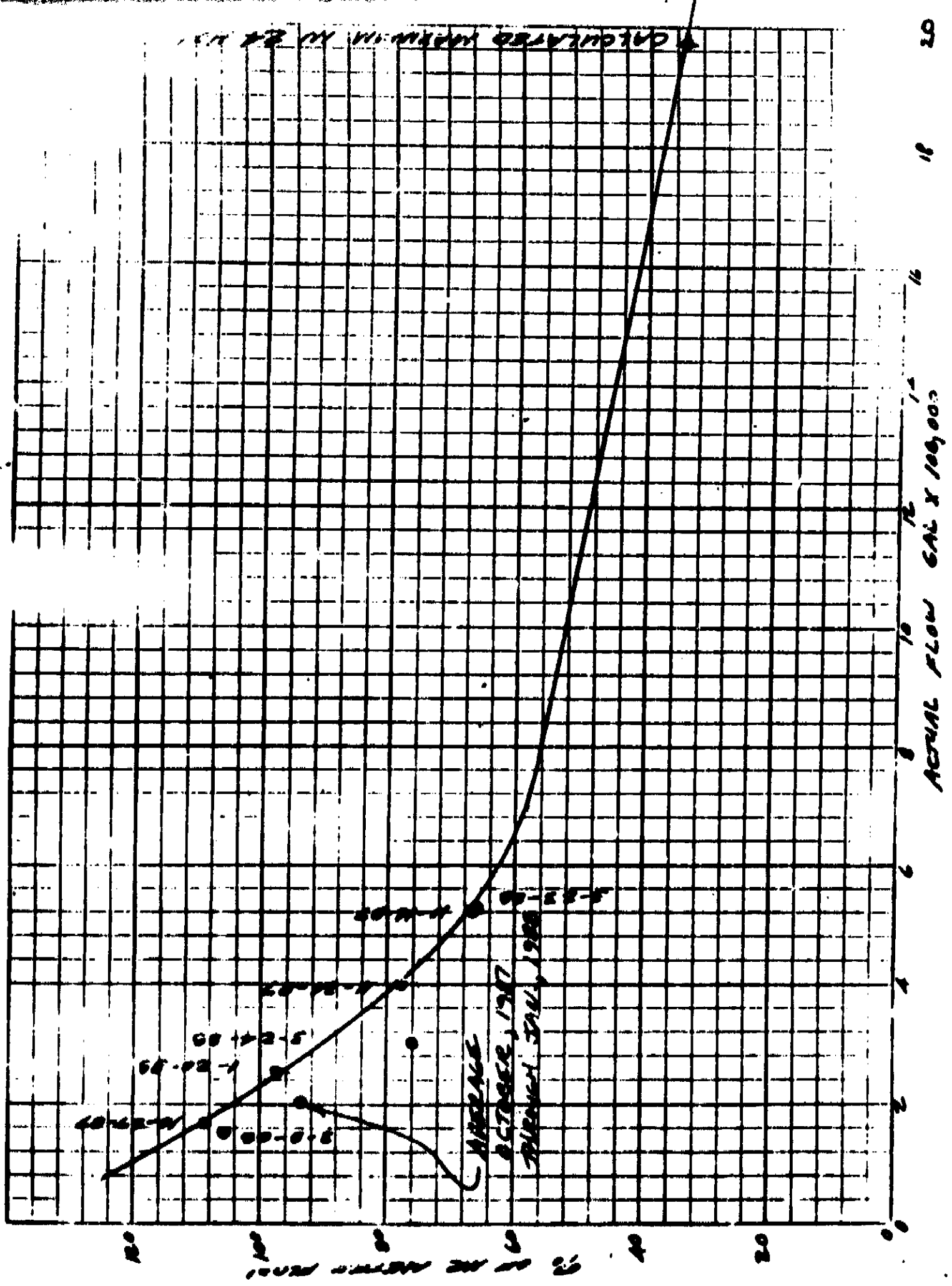




EXHIBIT "F" 3/3  
EFFLUENT DATA - DISCHARGES ONLY

1987

MONTH	J	F	M	A	M	J	J	A	S	O	N	D	AVG
BOD <sub>5</sub> mg/l AUG	35		34	11	18	10	32	31	40	26	28	4.5	27.9
BOD <sub>5</sub> mg/l MAX	49		46	11	18	10	32	33	50	28	28	43	
SS mg/l AUG	37		49	67	60	60	80	139	59	70	100	80	72.8
SS mg/l MAX	48		76	67	60	60	80	108	70	72	100	108	
FLOW CFS AUG	278	0	179	161	143	93	143	156	739	797	749	108	159
FLOW CFS MAX	278	0	278	572	278	278	278	278	278	278	278	278	
DAYS DISCHARGED	31	0	20	11	16	10	16	16	15	22	18		

EXHIBIT "G"  
PROPOSED REHABILITATION

- A. REPAIR OR REPLACE DEFECTIVE CONTROL PIPING AND VALVES
- B. PROVIDE FOR OPERATING TO 6 FT. WATER LEVEL TO INCREASE STORAGE AND DETENTION TIME
- C. PROVIDE EFFLUENT FLOW METERING AND RECORDING EQUIPMENT
- D. PROVIDE LAB EQUIPMENT FOR CITY TO DO COMPLIANCE AND OPERATIONAL CONTROL TESTING "IN HOUSE", TO REDUCE HANDLING DELAYS AND ALLOW MORE EXTENSIVE OPERATIONAL CONTROL DATA.
- E. IF OUR AGREES, PROVIDE FLOATING RACK IN DISCHARGE CELL TO PREVENT "SHORT-CIRCUITING", DESIGNED TO ACCOMMODATE FUTURE UPGRADE TO AERATED SYSTEM.

buried by Mr. Moser, and approximately two pickup truckloads of "white debris". "White debris" is household material such as household garbage, old appliances, and things of that nature. The "white debris" Officer Michael observed being buried by Mr. Moser included a washer and dryer.

(testimony of Officer Paul Michael; Department Exhibit 1,2)

4. Mr. Moser's land at site 2 is low land near a river and a pond. The area floods. Filling in the area, once the fill material was buried improved the value of the property by raising the elevation, improving its looks, and allowing Mr. Moser more complete access to the property.

(testimony of Mr. Marilyn Boyken; Officer Michael; Department Exhibit 1).

5. Mr. Moser attempted to show that Officer Michael's testimony was not credible. Mr. Moser raised the issue of a prior lawsuit between Mr. Moser and the Hudson Police Department, in which Officer Michael was a named party in his capacity as a police officer.

Mr. Moser also questioned Officer Michael regarding Officer Michael's prior employment. Mr. Moser's brother owns a protavet company and Officer Michael used to work for Mr. Moser's brother.

Mr. Moser's attempts to attack Officer Michael's credibility were unsuccessful. The evidence showed that Officer Michael was a credible witness.

(testimony of Mr. Moser; Officer Michael).

6. The evidence was uncontroverted that Mr. Moser regularly allows contractors to dump material on his property. Although Mr. Moser denied in opening statement that any violation occurred, Mr. Moser's own testimony showed that he allows some illegal material to be dumped on his property at site 2. Mr. Moser testified that he has five woodburning stoves on his property, and he implied that he accepted the wood which he testified he burns in his stoves. Mr. Moser and Mr. Donald Jones testified that City Councilman Patterson comes to Mr. Moser's property and hauls away metal, so obviously Mr. Moser accepts some metal. Mr. Moser also has accepted legal fill materials at site 2. Brick and mortar were brought to site 2 from buildings which were torn down in Waterloo.

(testimony of Mr. Boyken; Officer Michael; Mr. Moser; Mr. Jones).

7. On August 21, 1985, the Department inspected Mr. Moser's property, and found no violations of the Consent Decree. (Appellant's Exhibit 1).

8. One witness testified that people had dumped things on Mr. Moser's property without Mr. Moser's consent. The witness did not testify as to what material had been dumped without permission, except that on one occasion a load of shingles was dumped. On that occasion, Mr. Moser called the person who dumped



IOWA DEPARTMENT OF NATURAL RESOURCES  
ENVIRONMENTAL PROTECTION COMMISSION

ITEM

DECISION

PROPOSED CONTESTED CASE DECISION: ELOISE REESE

On November 14, 1986, the department issued Flood Plain permit FP 86-181 to Eloise Reese. That action authorized maintenance of a previously constructed levee system, with the stipulation that it be partially degraded to specified elevations. That action was appealed and the matter proceeded to administrative hearing on March 8 and 9, 1988. The hearing officer issued the attached Proposed Findings of Fact, Conclusions of Law, and Order on May 20, 1988. The decision affirms the department's permit, as issued.

Either party may appeal the Proposed Decision to the Commission. In the absence of an appeal, the Commission may decide on its own motion to review the Proposed Decision. If there is no appeal or review of the Proposed Decision, it automatically becomes the final decision of the Commission.

Mike Murphy  
Government Liaison Bureau  
May 25, 1988

88146DNR0006

the flows in the East and West Nishnabotnas. Flows from the West Nishnabotna can flow across the equalization area and into the East Nish, and vice versa, depending on which relative flow depth is higher. The Reese east-west levee, the access road, and County Road-J-46 all reduce the efficiency of this equalization area.

(Testimony of Jack D. Riessen, Larry Whitehead)

6. In 1964, Larry Whitehead moved the northwest corner of the levee. Whitehead admitted that after the northwest corner of the Reese levee had a blowout in January 1970, he repaired it and raised it one to two feet. Both Whitehead and Lloyd Heim, farm manager for Farmers National Company, testified that the Reese levee system had not been raised since 1970.

(Testimony of Larry Whitehead; Lloyd Heim; Reese Exhibit Q Department Exhibit 1)

7. Floods which overtopped the Reese levee to the extent that repairs were necessary occurred in the following years: 1957, 1960, 1962, 1964, 1966, 1967, 1970, 1972, and 1987. In 1982 the floodwaters came within one foot of the levee tops and in 1984 they came within six inches of the levee tops.

(Testimony of Larry Whitehead)

8. The Army Corps of Engineers performed repair work on the Reese levee system following the 1972 flood which was a seven year recurrent interval flood at the Hamburg Gauging station. The Army Corps of Engineers has authority under PL-84-99 to perform rehabilitation of any flood control work damaged by flood, hurricane, or coastal storm. PL 84-99 does not authorize the Corps to modify works to increase the degree of protection on to provide protection to a larger area. However, the Corps apparently routinely overbuilds a levee 10% when repairing in order to compensate for later settling.

(Testimony of Lloyd Heim, Larry Whitehead; Reese Exhibits T,U)

9. On August 2, 1973 the Iowa Natural Resources Council received a letter from H.E. Gunnerson, Chief Engineer for the Iowa State Highway Commission. Gunnerson Complained that landowners in the Riverton area were raising the levees to the grade line of the highway at the main bridge locations. This caused elevated water levels to the point where ice and debris were damaging the super structures of the main bridges.

The Highway Commission raised the bridges to even higher elevations and the landowners again raised their levees. Gunnerson enclosed a survey of the area with his letter and stated that the survey information was obtained throughout the years by the Highway Commission and is all referenced to the same datum. The enclosed survey indicates levee raises between 1953 and 1970 for points indicated A,B, and C. It indicated a levee raise between January and June 1972 for points indicated D,E,F, and H. Points D,E,F and H on the survey are all points on the Reese levee system.

21. Evaluating existing flow patterns for the project area is extremely complex due to the extensive network of privately owned and constructed levees. Riessen modeled flow profiles using HEC-2 Water Surface Profile Computer Program, a computer model developed by the U.S. Army Corps of Engineers which has become a national standard for computing surface water and stream profiles. Sulo Wiitala approved the use of the HEC-2, program stating that it provided the best results achievable with today's technology. Using HEC-2, water surface profiles were evaluated for three conditions:

- a) flow confined to existing levee system-water surface profiles computed for various flow values assuming flows contained between existing levee alignments. As a simplifying assumption, no flow diversion or equalization was assumed to take place along and adjacent to J-46, although this does occur for certain ranges of flows. See finding of Fact 10.
  - b) Unconfined flows-profiles calculated for "no levee" conditions. Complete flow equalization assumed to take place across the common flood plain.
  - c) Reese levee effective - others not effective.
- (Record 2; Testimony of Jack Riessen; Sulo Wiitala; Department Exhibits B,C,D)

22. Riessen concluded that levee development along the mainstem and the East and West Nishnabotna has increased flood heights substantially. He points to the upward shift of the rating curve for the USGS gaging station 1 1/2 miles downstream from the confluence as verifiable evidence of this effect. The June, 1947 flood of 55,500 cfs reached an elevation of 920.2 ft, N.G.V.D. The June, 1984 flood of 24,300 c.f.s. reached an elevation of 922.3 ft. N.G.V.D. Although the 1984 flood was less than one half the magnitude of the 1947 flood, it was about two feet higher at the gaging station site.  
(Testimony of Jack Riessen)

23. Riessen contends that main channel sedimentation or aggradation is not a primary factor in the contemporary rating curve shift. Aggradation is the filling and raising of the level of the stream bed by deposition of sediment. In the Project Summary Report (Record 2) Riessen states that while the Nishnabotna carries a heavy sediment load, the channel system appears to be in equilibrium. Reese Exhibits E and F, prepared by Sulo Wiitala, are Channel Crosssections of the Nishnabotna River above Hamburg for the years 1956-1987. Those exhibits show that the level of the stream bed has fluctuated.  
(Testimony of Jack Riessen, Sulo Wiitala; Record 2; Reese Exhibits E and F)

24. Riessen concluded that the levees in the area provided, on the average, 2 to 10 year flood protection. Many levees would overtop with less than a five year interval flood and levees can fail from seepage "blowout" prior to overtopping. The Reese levee is from 1 1/2 to 5 ft higher than adjacent levees, and based on the computed flow profiles Riessen concluded in his project summary report that it would take in excess of a 100 year

proceedings, the burden of proof, apart from statute, is on the party asserting the affirmative of an issue." There is no statute fixing the burden of proof in cases such as the one under consideration here. Although some of the Divisions of Chapter 455B contain statutory provisions allocating burden of proof, Division III, Part IV, does not.

There are numerous legal issues presented in this case. The burden of proof with respect to jurisdictional issues is clearly on the Department. With respect to the permit itself, the Department has the burden of going forward to show the basis for its decision and the permit conditions. However, the burden of persuasion is on the appellant to show that the permit conditions are unreasonable, arbitrary, or capricious. The appellant, as the applicant for the permit and the petitioner, is the moving or pleading party in this respect. In addition, the burden of proof for the constitutional issues is clearly on the appellant, who is the pleading party.

11. The appellant argues that the permit conditions are unreasonable. She questions the validity of the Department's choice of a ten year protection level and the Department's technical analysis. In addition, she has argued that the conditions are unreasonable because of the economic impact that they will have on her. These issues will be addressed in order.

Riessen decided that a 10 year protection level would be appropriate for the Reese levee under the circumstances. See Finding of Fact 27. Appellant disputes Riessen's interpretation of the word "comprehensive" and argues that her levee, as a comprehensive levee, is entitled to 25 year protection under 900 (now 567) Iowa Administrative code 72.4(1)(a). In her reply brief at page 6 appellant reiterates that she should be allowed protection from a twenty-five year frequency flood. It should be noted that 900--72.4(1)(a) does not state that levees should be afforded "protection" from a Q10 to Q25 flood. Rather the rule states that levee heights are to be limited so "that overtopping will occur due to discharges from Q10 to Q25 with one more comprehensive levee system being permitted the greater degree of protection." (emphasis added)

Appellant argues that Riessen's definition of "comprehensive" must be rejected because it varies from the common meaning of the term and such an interpretation should not be given deference absent a properly promulgated rule.

Administrative tribunals are to be given a reasonable range of informed discretion in the interpretation and application of their own administrative rules. Dameron v. Newman Brothers, 339 NW 2d 160 (Iowa 1983). The hearing officer agrees that the Reese levee is comprehensive, in the ordinary meaning of that term, with respect to the Reese Property. However, the rule does not allow the greater level of protection to the "comprehensive" levee, but to the "more comprehensive levee system." The rule requires the Department to weigh the relative comprehensiveness of the system to determine level of protection. Given the

management area would virtually eliminate this equalization effect and create more than a 1.0 increase in stages." (emphasis added) Appellant Reese has just learned that the Department of Natural Resources proposes to raise the levees around the upstream game management area and, in fact, has held a bid letting for a project to raise the dikes around this state area. Assuming, without knowing, that such a project is permitted by the Department constructing it, this matter should be reheard to integrate whatever findings were made to allow raising the levees around the upstream game management area into the hydraulic analysis and facts considered in the Reese levee matter.

4. Finding of Fact 27. This Finding of Fact states a mere estimate by Mr. Riessen, but does not state any provable fact to show that the Reese levee degraded to the elevations permitted would in fact provide protection from a ten year recurrent interval flood. In fact, Riessen used the wrong stream, i.e., the West Nishnabotna instead of the East Nishnabotna, and erred in applying slope to arrive at the heights for points A, B, C and D in the permit. Mr. Riessen and Mr. Wiitala both testified that they used flood slopes to arrive at their elevations and yet Mr. Riessen's slope yields only 3.5 feet of difference in elevation between points C and B, while Mr. Wiitala's slope yields 5.9 feet of elevation between point C and point B, allowing by this refinement itself almost 2.5 feet more protection in the upper or northerly levee than that allowed by Mr. Riessen. Evidence shows Mr. Riessen has continually adopted the least protection available for the Reese levees. For instance, since he and Mr. Wiitala used the same slope, if 928.5 were the correct elevation for a ten year flood at point C, the correct elevation for a ten year flood at point D would be 934.4, whereas Mr. Riessen has assigned 932 to that point. The chart below graphically

"encroachment limits". This term is defined in 900 IAC §70.2 (now 567-70.2) as the boundaries of the floodway. By failing to satisfy the "1 foot rise" criterion in 900 IAC §72.4(1)"d", the Reese levee system is, by definition, located within the floodway.

f. Application paragraph 6: The first unnumbered paragraph dealing with slope is essentially a summarization of application paragraph 4 which is addressed above. The second unnumbered paragraph contains three separate allegations. The first alleges that Jack Riessen erred in determining the height of the ten year frequency flood. Appellant fully argued this point in her Brief and Argument, pp. 11-12. Secondly, Appellant argues that the full facts are not before the Hearing Officer because some of Jack Riessen's interpretations were based on profiles not entered into evidence. Mr. Riessen's conclusions are clearly in evidence as are Mr. Wiitala's conclusions based on Mr. Riessen's background analysis. Finally, Appellant asserts that the Department failed to carry its burden regarding flood slope and mathematical calculations. The Department met its burden of coming forward with evidence establishing the propriety of issuing the flood plain permit. However, Appellant did not offer any contrary evidence requiring the Department to submit additional evidence. Indeed, Appellant's evidence in the form of expert testimony by Sulo Wiitala merely confirmed the Department's evidence.

appealed to Sibley area residents in informal radio and newspaper announcements not to burn due to the extremely dry weather. May 13, 1987 was a rainy day. (Testimony of Ted Krull, Herman Gradert)

5. The farmhouse that was burned is located outside the Sibley fire department's district and in the Little Rock fire department's district. Chief Krull was not aware of this until a week before the hearing. Krull stated that the property is listed in the Sibley phone directory and his department has routinely answered fire calls in that area. The Sibley fire department is made up of volunteers, but the fire chief is a paid position. Krull stated that under the Mutual Aid Agreement between the fire departments they answer all calls, even if outside their territory. Krull stated that in addition to answering such fire calls, he would also answer questions and assist in getting permits for individuals outside his territory.  
(Testimony of Ted Krull)
7. Krull testified that when he requested variances from the Department to burn a building the Sibley fire department always does the actual burning and uses it as a training fire. Krull stated that none of his variance requests had ever been denied. Mr. Krull was confused as to the nature of the Department's involvement in the training fires. Training fires are exemptions from the open burning prohibition and no variance is required. However the fire department must contact the Department and provide sufficient information concerning the training fire, including the proposed dates of the fire and alternate dates. The Department will then send a letter acknowledging that it is a bona fide training fire and confirming the dates.  
(Testimony of Ted Krull, Doug Campbell)
8. If Mr. Gradert had contacted Mr. Krull prior to the fire, Krull would have arranged for a training fire.  
(Testimony of Ted Krull)
9. Training fires are carried out only if proper weather conditions permit. The building is kept as wet as possible to prevent the fire from spreading to other buildings. The Department allows training fires as exemptions to the open burning prohibition and encourages them because the benefit to the public outweighs the potential damage to the environment.  
(Testimony of Ted Krull, Doug Campbell)
10. Doug Campbell, an Environmental Specialist III with the Department's Air Quality Enforcement Program testified that the department's air quality rules are a mechanism to attain and maintain the National Ambient Air Quality Standards which the federal government has established for various pollutants, including particulate emissions, sulfur dioxide,

DECISION AND ORDER

It is therefore ORDERED that the issuance of Administrative Order 87-AQ-17 is affirmed, in part, and reversed, in part. The violation of 567 Iowa Administrative Code 23.2(1) is affirmed. The administrative penalty of \$150.00 for gravity of the violation is affirmed. The administrative penalties for culpability, economic benefit, and aggravating factors are reversed.

The appellants are therefore ORDERED to pay an administrative penalty of \$150.00 within thirty days of the date this order becomes final

Dated this 7<sup>th</sup> day of June, 1988.

Margaret LaMarche  
Margaret LaMarche  
Hearing Officer  
Iowa Department of Inspections and Appeals

ML/jmm

cc: Mark Landa  
Ernest and Kevin Gradert



8. The two owners of property immediately upstream from the Heaberlin property have straightened the Otter Creek channel on their portions of Otter Creek. (testimony of Dave Allen; Jack Riessen; Harry Alender; Department Exhibits 14, 15).

9. There are two channel changes on Otter Creek on the part of the Heaberlin property at issue in this case. Pilot channel 2 begins on the King property and ends on the Heaberlin property. Pilot channel 3 is entirely on the Heaberlin property. The Department has never issued a permit for these two channel changes. (testimony of Mr. Dave Allen; Department Exhibits 2, 15).

10. Creeks and rivers sometimes change course naturally, without any human intervention. (testimony of Dave Allen; Jack Riessen).

11. The department is concerned with pilot channels and channel changes for a number of reasons. The department uses the term pilot channel to mean a cut made by man to capture the flow of a stream so that it becomes the stream channel. Human induced channel changes can cause serious erosion, can induce instability in a stream bed such that it begins to degrade and propagates upstream hurting other landowners, can increase flooding downstream, and drastically reduces fish and wildlife habitat. (testimony of Mr. Riessen).

12. The fighting issue in this case is the question of whether the two channel changes on the Heaberlin property are natural or man-made. There is ample evidence, including expert testimony, to support either conclusion.

A. The Department's position is that the two channel changes are man-made. This position is supported by the testimony of two witnesses, Mr. Dave Allen and Mr. Jack Riessen. Mr. Allen has been an environmental specialist with the Department since 1973. Although he is not an engineer, he has extensive experience investigating flood plain construction. He is familiar with the portion of the Heaberlin property at issue in this case, having first performed a field inspection of the property and upstream property on July 24, 1985. At that time he observed that the pilot channel streambeds were two to four feet higher than the existing Otter Creek channel streambed, that they were undersized compared to the existing channel, that the beds and side slopes of the pilot channels were generally poorly vegetated, and that they had carried stream flow in the past but were not doing so on the date of inspection. They were dish-shaped or parabolic in cross-sectional shape. Mr. Allen observed scour and bank erosion on the stream banks in a number of places in channel three. Photographs were taken on the date of the inspection. Based on his inspection, Mr. Allen concluded that the pilot channels were the result of excavations made by some person.

number two was significantly deeper and somewhat realigned. In February 1986, channel number two contained a division. During the first visit, Mr. Alender was more aware of the south leg of the division which generally aligned with channel three on the opposite side of the main stream and exposed field tile. By the time of the second inspection, this south leg appeared to have been silted in and was not carrying water. On the first visit, the south leg appeared to have been carrying water. Channel two as it now exists is not a straight line, but is more of an arc in shape. Channel two meets the main channel in such a way that stream flow must make a right angle turn to enter channel three. The north leg is significantly deeper than it had been a year before. The entrance to channel two is much lower than it had been. Channel two had significant lateral erosion at the right side of its entrance.

Channel three had become deeper and wider between the two visits. A great deal of erosion on the left side of the entrance to channel three and on the right side of the original channel had occurred. Mr. Alender concluded there had been a lot of activity in that area. There are some large trees that completely cross the old channel south of the entrance to channel three. The year before, those trees had existed, although some may have moved downstream. There were also some large trees further downstream in the old channel.

Appellant's Exhibit C is a soil survey of Warren County, Iowa. Mr. Alender considered significant the fact that the soil survey map showed an old intermittent waterway in the area of channel two when he arrived at his opinion regarding the cause of the channel changes. He testified that during floods, the water would overtop its banks and cut through at channel two. Mr. Alender noticed that there are a lot of sand banks and sand deposits in the area. He speculated that the sand which had plugged the south leg of channel two came from a large sand deposit in the area of the Shields excavation.

Mr. Alender testified that it was his opinion after his inspection in February 1986 that channel number three was cut by the action of running water. He compared channel three to the channels on the Shields and King properties, and testified that channel three was substantially different in character from the Shields/King channels. On the Shields/King channels, the depth from the top of the bank to the stream bottom was approximately twenty feet, whereas in channels two and three, the depth was approximately four to six feet. He also felt it was significant that the soil survey map showed an intermittent waterway not crossable by farm implements just north of channel number three. Mr. Alender testified it was obvious the stream is a very active stream and the soils are easily erodible. He testified the influences of various blockages, and any change in the flow from upstream have had a tendency to cause stream flow to follow the course of channels two and three.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ENVIRONMENTAL PROTECTION COMMISSION

ITEM 12

INFORMATION

TOPIC: Groundwater Standards Hearings

The Iowa Ground Water Protection Act mandated the Department to hold six public hearings on what role, if any, standards should play in the protection of the resource. The Department held 14 hearings. Approximately 550 people attended the hearings. In addition, written comments have been received from approximately 250 people.

The hearings were heavily attended by individuals associated with the ag-chemical industry. These people tended to support state adoption of federal drinking water standards for the protection of ambient ground water when federal standards were developed. Written comments overwhelmingly support the idea of the state not adopting standards and focusing its attention on prevention of contamination, at least until it can be shown that this approach will not work.

There appeared to be a significant amount of confusion over the use of terms in both the hearings and the written comments. As an example, many people said that they favored "high standards". The context of their comments would tend to lead us to believe that they were in favor of a "high standard of protection" and not in favor of allowing a large amount of contamination. As a result of this confusion, we are exploring the possibility of preparing a written questionnaire that would clearly define the terms and request the respondent to specify their position on standards given those definitions. We would send this questionnaire to all of the people who attended the hearings and those who provided written comments so that we can verify that we understand their position on the issue of standards.

James Combs  
Administrator  
Coordination & Information Division

June 7, 1988

88159DNR0006

Numbers in Parentheses Represent Reports for the Same Period in Fiscal Year 1987

Month	Substance Type					Mode			
	Total # of Incidents	Petroleum Product	Agri. Chemicals and Substances	Other Chemicals and Substances	Handling and Storage	Pipeline Incident	Highway Incident	RA Incident	Other
Oct	69	47	4	18	53	0	9	1	2
Nov	48	35	3	10	57	0	4	0	1
Dec	46	36	3	7	39	1	2	0	0
Jan	54	43	4	7	45	1	5	1	1
Feb	51	30	2	19	57	1	9	3	1
Mar	67	41	10	16	49	1	11	2	0
Apr	130	58	50	22	85	0	36	2	2
May	99 (74)	39 (24)	42 (29)	18 (21)	48 (39)	0 (0)	42 (24)	2 (2)	1(6) 6 (3)
		UST-20			UST-20				

Total # of Incidents Per  
 Field Office 01 02 03 04 05 06  
 This Period 20 12 10 17 22 18

IOWA DEPARTMENT OF NATURAL RESOURCES  
ENVIRONMENTAL PROTECTION COMMISSION

ITEM 9

DECISION

CONTESTED CASE APPEAL: STAN MOSER

On November 3, 1987, the department issued administrative order 87-SW-26 to Stan Moser. That action assessed an administrative penalty and directed Mr. Moser to cease and clean up alleged unpermitted solid waste disposal. That action was appealed and the matter proceeded to administrative hearing on March 7, 1988. The hearing officer issued the Proposed Findings of Fact, Conclusions of Law, and Order on April 12, 1988. The decision affirmed the department's order.

Mr. Moser has appealed this order to the Commission. The Proposed Decision, and pertinent documents have been distributed to the Commissioners. The entire record, including hearing tapes and exhibits are available for your review. The parties will be available to argue their respective positions and respond to your questions. You may then affirm the Proposed Decision, or modify or reverse it, substituting your own findings of fact and conclusions of law based on your conclusions from your review of the record and legal argument.

Mike Murphy  
Government Liaison Bureau  
June 2, 1988

88154DNR0020

the shingles to come and remove them.  
(testimony of Mr. Merlyn Boyken).

9. Mr. Moser does not have a permit allowing for solid waste disposal on his property.  
(Administrative Order No. 87-SW-26).

#### CONCLUSIONS OF LAW, DECISION AND ORDER

Iowa Code Section 455B.307(1)(1987) provides in part:

"It shall be unlawful for any private agency or public agency to dump or deposit or permit the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the director. This section shall not prohibit a private agency or public agency from dumping or depositing solid waste resulting from its own residential, farming, manufacturing, mining or commercial activities on land owned or leased by it if the action does not violate any statute of this state or rules promulgated by the commission or local boards of health, or local ordinances."

Iowa Code Section 455B.109 gives the department the authority to assess administrative penalties for violations. 567 Iowa Administrative Code Chapter 10 provides the criteria and details regarding assessment of administrative penalties.

567 Iowa Administrative Code Section 102.1 provides that "no public or private agency shall construct or operate a sanitary disposal project without first obtaining a permit from the director."

567 Iowa Administrative Code Section 101.3(1) provides that "open dumping is prohibited except for rubble".

"Rubble" is defined as "stone, brick or similar inorganic material." 567 I.A.C. 100.2.

Administrative Order No. 87-SW-26 ordered Mr. Moser to stop all dumping except legally defined rubble and stop permitting dumping on his property without a permit, to remove the solid waste disposed of on his property on or about April 30, 1987, report the completion of the clean-up to the Department, and pay an administrative penalty of \$250.

Administrative Order No. 87-SW-26 was correct. Mr. Moser has violated Iowa Code Section 455B.307(1), 567 Iowa Administrative Code Section 101.3(1), and 567 Iowa Administrative Code Section 102.1. Mr. Moser violated these rules and statute after having already entered into a prior Consent Order.

Therefore, the issuance of Administrative Order No. 87-SW-26 is hereby affirmed, and Mr. Stan Moser is hereby ORDERED to comply with said order.

Response on February 3, 1988. On February 4, 1988 Appellant filed a Motion to Continue. An Order for Continuance was issued on February 9, 1988 and the hearing was set for March 8 and March 9, 1988.

The hearing was held on March 8 and March 9, 1988 in the third floor conference room, Wallace State Office Building, 900 E. Grand, Des Moines, Iowa 50319.

Representing the parties were Randall Clark, counsel for the Department and James C. Davis, counsel for Eloise Reese. The undersigned hearing officer presided.

Post hearing briefs were filed on April 22, 1988. Appellant filed her reply brief on May 6, 1988. The Department's reply brief was received on May 9, 1988.

#### THE RECORD

The evidentiary record in this case consists of the recorded testimony of the witnesses, the above pleadings, and the following Exhibits:

- |                      |                                                                                                                                                   |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| Department Exhibit 1 | Transparency of physical layout of Reese Levee.                                                                                                   |
| Department Exhibit 2 | Letter dated 8-2-73 from the Iowa State Highway Commission to the Iowa Natural Resources Council.                                                 |
| Department Exhibit 3 | Survey of Riverton Township, T68N,R41W, Sec 19 enclosed with Exhibit 2.                                                                           |
| Department Exhibit 4 | Iowa Natural Resources Council Form 1 Application for Approval dated 8-23-74.                                                                     |
| Department Exhibit 5 | Memorandum to file re: 9-10-75 telephone call from Norman Kling.                                                                                  |
| Department Exhibit 6 | Letter dated 9-11-75 to Roland Jensen, Farmers National, from Director, Iowa Natural Resources Council.                                           |
| Department Exhibit 7 | Certified letter dated 3-25-83 to Doc Brandt and Roland Jensen, Farmers National from James Webb, Director of the Iowa Natural Resources Council. |
| Department Exhibit 8 | Letter dated 4-4-83 from W.P. Brandt to Mike Smith.                                                                                               |
| Department Exhibit 9 | Letter dated 1-19-84 from Michael Smith to W.P. Brandt.                                                                                           |

(Testimony of Jack D. Riessen; Department Exhibits 2,3)

10. On August 28, 1974, Farmer's National Company, as agent for Elmer Reese, filed a permit application with the Iowa Natural Resources Council (a predecessor Agency to the Department). The application sought approval for a plan to raise the south portion of the east dike to the level of the north portion of the dike. Engineering plans were never submitted and the permit was not issued. On July 10, 1975, the Department received a complaint from Norman Kling, a member of the 22 club. Kling told the Department that the Reese dikes on the East bank of the West Nishnabotna were being raised. Kling also stated that the dikes along the west side of the East Nishnabotna were raised 2-3 feet the previous year. This would be the area which was the subject of the 8-28-74 permit application. On September 11, 1975 the director of the Department wrote Farmer's National and ordered that all construction activity cease until the project could be reviewed, ordered Farmer's National to submit a permit application, or, in the alternative, return the area to its original state.

(Department Exhibit 4,5,6; Testimony of Jack Riessen)

11. Since 1979, Larry Whitehead has been the sole contractor for all of the dirt work on the Reese Levee system, in addition to being the tenant farmer. Whitehead has been an independent contractor in the land improvement business doing terrace work, dikes, diversions, drainage and levee work from 1964-1970 and 1979 to the present. In 1981 Whitehead began work on raising the access road to the Reese property which was washed out in spring, 1979. The 22 Club got an injunction against the construction of the access in District Court, and litigation over the access continued for the next several years. After an Iowa Supreme Court ruling in their favor, Whitehead finished raising the access road in January, 1984. Whitehead did not apply for a permit from the Iowa Department of Water, Air and Waste Management. In September, 1983 Whitehead spent an afternoon with Wayne Gesselman, chief engineer for the Iowa Department of Water, Air and Waste Management. Whitehead explained the access road project to Gesselman and Gesselman told him that he did not think he had a problem with the access road. Based on this conversation, Whitehead assumed that the Department had approved the raising of the access road. On January 19, 1984, the District manager from Farmers National Company received a letter from Michael H. Smith, compliance officer, notifying him that the department did not intend to assert jurisdiction over the access road. However, the 1-19-84 letter did request Farmer's National Company to submit an application for a permit for the Reese levee system and engineering plans no later than May 15, 1984.

On April 17, 1985 the Department received a letter from Dale E. Miller, Fremont County Engineer. Miller complained that the raising of the access road would cause a higher level of floodwater on the road and for a longer duration than previously



flood to overtop the Reese levee system, although it could fail at lesser discharges due to seepage blowouts or channel-side erosion. In the addendum to the Project Summary Report (Record 2) Riessen conceded it is possible that under existing conditions, the Reese levee system has less than 100 year flood protection.

(Record 2,3; Testimony of Jack Riessen)

25. The area adjacent to County Road J-46 serves as an equalization area in diverting flows from the East Nish to the West Nish or vice versa. The field entrance ramp to the Reese levee system from county road J-46 does reduce the efficiency of the equalization area adjacent to J-46. The impact of the elevated field entrance becomes more critical as the difference in the water surface elevations between the East and West becomes greater. For some flow scenarios, the field entrance could cause premature overtopping of either the East or West Levees. The field entrance can cause greater depths of inundation over J-46 when the diversion is from East to West, but the overgrade velocities would be lower. Appellant has proposed the installation of additional tubes under the field entrance to counteract this effect, but Riessen concluded that additional tubes alone are insufficient to restore the efficiency of the flow equalization area.

(Record 2; Testimony of Jack Riessen)

26. Under Department rules, the increase in flood profiles due to a levee can not be greater than 1.0 foot for any discharge, assuming equal and opposite degrees of encroachment "For most agricultural levee projects, determining the necessary setback to meet the 1.0 foot rise criterion involves determining the 1.0 ft. rise encroachment limits for that particular level-of-protection flood. If a landowner wishes to provide 10-year flood protection with a levee, hydraulic model studies are performed to determine what levee offsets would produce a 10 year flood level 1.0 foot above the no-levee 10 year flood. The levee alignment could then be no nearer to the channel than the determined offset or setback distances. For the Reese levee, determining acceptable offsets is considerably more complex because of the flow equalization that would take place for the no-levee flow situation. Based on the hydraulic analyses, any levee on the Reese property as well as the upstream game management area would virtually eliminate this equalization effect and create more than a 1.0 increase in stages.

(Testimony of Jack Riessen; Record 2)

27. Riessen concluded that the most equitable solution would be to approve the Reese levee and access road with modifications, i.e. degradation of specified points. This essentially amounts to the granting of a variance, since the levee violates the department's normal maximum effect criterion. Riessen states that this result is consistent with actions against other landowners and justified to resolve a long standing regulatory problem.

deference allowed the agency in the interpretation and application of its own rules, and the agency's experience with a wide range of levees, I cannot conclude that the department's interpretation and application of the rule was unreasonable.

Appellant argued that the Department's technical analysis, and its conclusion that points A,B,C, and D and the access road would have to be degraded should be rejected on the grounds the profiles projected by the Department are based on erroneous conclusions and calculations based on mistaken assumptions from suspect data. Appellant's expert, whose credentials are unquestioned, used the same data and slopes as those used by the Department. His calculations differed from the Department's because his were based solely on a confined flood condition. The Department's calculations were based on a confined, unconfined, and only Reese levee effective conditions. Given the geographical circumstances of the area, the Department's approach was reasonable. Moreover, the appellant's expert stated unequivocally that he had no problem with Riessen's analysis and results. Appellant failed to establish that the permit conditions were unreasonable due to the inaccuracy of the underlying technical analysis.

Appellant argued that she is dependent upon the property in question to provide income for her basic needs. She offered Exhibit G in support of this allegation. Exhibit G was admitted subject to a relevancy objection. The Department argued that the effect of the permit on appellant's financial situation was irrelevant and should not be considered. Appellant argued that it must be considered in the determination of whether the permit is reasonable. Upon review of the statutes and rules, it is clear that the permittee's financial dependence upon the land is not a factor which the department is authorized to consider in its consideration of the permit application. Therefore, Reese Exhibit G is hereby stricken from the record.

12. The Department's exercise of jurisdiction over the Reese levee is not rendered arbitrary and capricious due to the existence of many unpermitted levees in the same general area. The Department's witnesses testified that they had insufficient information concerning when other levees in the area were constructed or raised and therefore were unable to assert jurisdiction over them. In addition, since the size of their staff is small in relation to the many miles of rivers and streams to be regulated, the Department must rely heavily on complaints to discover potentially illegal structures. Furthermore, the Department specifically considered the existence of the other unpermitted levees when it decided that the most equitable solution would be to grant a variance for the Reese levee, rather than to deny it a permit. Finally, some of the levees in the area are permitted. See Record 2, pp.3-5. Under all of these circumstances, the Department's action with regard to the Reese levee cannot be deemed arbitrary and capricious.

13. The appellant alleges that Flood Plain Permit FP-86-181, if affirmed, is an unconstitutional "taking" of her property for

shows the mathematical error:

Reference Points	Present	Permit	Corrected Slope Permit
A	934.87	932	934.4
B	929.9	928.5	928.5
C	929.8	928.5	928.5
D	932.7	932.0	934.4

5. Conclusions of Law, Decision and Order (Conclusions) paragraph 3. There is no showing in the record that the Reese levee lies in the floodway of the East and West Nishnabotna Rivers, as the floodways are confined just upstream of this property by the bridges across each river on County Road J46.

6. Conclusions, paragraph 11(5) (first full paragraph on page 17). Focusing in this application on erroneous calculations, it is clear from the charts presented by Appellant in her briefs heretofore filed and above that calculations used by the Department in preparing the permit are erroneous in that the correct slope was not used to set the upstream heights (points A and D). Since Mr. Riessen, at page 111 lines 4 through 10, stated that he used the slope determined from flood profiles and the slope of the stream itself. There is a mathematical error and rehearing should be granted to correct it.

Additionally, Mr. Riessen has mistaken the height of the ten year frequency flood which should be assigned to points A, B, C and D. as representative of the levee system. Also the full facts are not before the Hearing Officer, as Mr. Riessen states on page 119 of the record at lines 15 through 17 that his interpretation was based on profiles that had been entered into evidence as well as some that were not. The Hearing Officer held (Conclusions, page 10) that "the Department has the burden of going

THEREFORE, all matters raised by Appellant as grounds for rehearing were previously considered in this contested case proceeding so that a rehearing is neither appropriate nor necessary. Accordingly, the Department prays that Appellant's Application for Rehearing be denied.

Respectfully Submitted,

Iowa Department of Natural Resources

By: *Randall L. Clark*  
Randall L. Clark  
Compliance Officer  
(515) 281-8891

Original mailed to:

Margaret LaMarche, Administrative Hearing Officer  
Department of Inspection and Appeals, Division of Appeals  
and Hearings.  
Lucas State Office Building - 2nd Floor  
L O C A L

Copy mailed to:

James C. Davis, Attorney at Law  
Skywalk - Suite 203  
700 Walnut Street  
Des Moines, IA 50309

I hereby certify that I have duly served this pleading upon all parties to this proceeding in this proceeding by mail and that all fees may be paid by the party in properly addressed envelope.

Dated at Des Moines, Iowa, this 20th day of June, 1988.

By: *James C. Davis* :JP  
By: *Michael H. Hughes*  
Michael H. Hughes  
Attorney at Law  
700 Walnut Street  
Des Moines, Iowa 50309

carbon monoxide, hydrocarbons, and nitrogen dioxide. In his position as the Compliance and Enforcement Coordinator for the Air Quality Enforcement Program, Campbell has reviewed and interpreted data pertaining to open burning. After reviewing the EPA Compilation of Air Pollution Emission Factors (1986) Campbell concluded that as a result of the burning of the Gradert house there was a potential for localized impact on public health and welfare and that pollutants were emitted into the air. Campbell concluded that the fire could have had a localized negative impact on vegetation, livestock, and wildlife and that small particulate matter from the fire could be inhaled into people's lungs.

The EPA Emission Factors do not directly address the open burning of a farmhouse. Campbell referred to the emission factor for combustion using conical burners for wood refuse and municipal refuse. Campbell stated that the emissions from open burning would be greater than those for conical burners. These emission factors indicate that two pounds sulfur dioxide is emitted for every ton of wood or municipal refuse combusted in a conical burner. Sixty pounds of carbon monoxide would be emitted for every ton of refuse combusted. Campbell testified that he had no way of estimating the tonnage of the Gradert home.  
(Testimony of Doug Campbell)

11. Campbell testified that in his opinion \$200.00 was a fair estimate of the cost of demolishing the Gradert house and disposing of the refuse at a sanitary landfill.  
(Testimony of Doug Campbell)
12. Administrative Order 87-AQ-17 assessed a penalty of \$150.00 due to the gravity of the violation. The testimony established that large amounts of particulate matter and carbon monoxide are released by open burning. The public health and welfare were potentially threatened by this release. The \$150.00 assessment for this factor is reasonable.
13. Appellants were assessed a \$100.00 penalty for culpability on the grounds it was a knowing violation or disregard for the requirements of the Department. The preponderance of the evidence did not establish that this was a knowing violation. The breakdown in communication between Herman Gradert and Ted Krull makes it difficult for determine the state of mind of either man. Mr. Gradert did not understand that he needed to call the fire chief again before Krull would make his request to the Department. Mr. Krull never told Gradert that he intended to have the fire department use the house as a training fire. Mr. Gradert's confusion over the Department's requirements cannot excuse the violation, but it makes it impossible to conclude that this was a knowing violation or with disregard for the Department's

IOWA DEPARTMENT OF NATURAL RESOURCES  
ENVIRONMENTAL PROTECTION COMMISSION

ITEM 10B

DECISION

PROPOSED CONTESTED CASE DECISION: FRANCIS HEABERLIN

On November 25, 1986, the department issued Administrative Order 86-FP-04 to Francis Heaberlin. That action directed remediation of alleged flood plain excavations. That action was appealed and the matter proceeded to administrative hearing on January 25, 1988. The hearing officer issued the attached Proposed Findings of Fact, Conclusions of Law, and Order on June 14, 1988. The decision reverses the department's order.

Either party may appeal the Proposed Decision to the Commission. In the absence of an appeal, the Commission may decide its own motion to review the Proposed Decision. If there is an appeal or review of the Proposed Decision, it automatically becomes the final decision of the Commission.

Mike Murphy  
Government Liaison Bureau  
June 16, 1988

88168DNR0007

On December 18, 1976 and January 13, 1988, Mr. Allen again inspected the Heaberlin property. He took photographs on those visits. Channel three had eroded vertically downward to the point where it was carrying normal stream flow. (Compare Department Exhibit 4d with Department Exhibit 16d, and compare Department Exhibit 4e with Department Exhibits 16b and 16c). There were some obstructions in the original channel which helped to divert stream flow into the pilot channel. There was no flow in the old channel, and channel three was carrying all the flow. The shape of the banks had changed significantly due to erosion. In 1985, the banks of channel three were gently sloping. By 1987 and 1988, the banks of channel three were almost vertical.

Mr. Allen observed a rather large scour hole at the downstream end of channel 2 which had not been there during the initial inspection. (Compare Department Exhibit 4b with Department Exhibit 16e). Channel two had eroded, but was not carrying normal stream flow. There was no significant change in depth at the upstream end of channel two between 1985 and 1988. At the downstream end of channel two, the channel is much deeper and wider than it was in 1985.

After Mr. Allen first inspected Mr. Heaberlin's property in 1985, he felt very strongly that the department should proceed. He testified it looked like there had been work done recently within the last year or so. Mr. Allen looked at the channel change on a topographic map, and that influenced his decision to take action. When viewed on a topographic map, channels two and three appear to line up to a certain degree with excavated channels on the two upstream landowner's property. In a memo dated July 24, 1985, Mr. Allen wrote "this channel change is obviously the result of a pilot channel which was constructed sometime after 1977, as there is no evidence of the pilot channel in '77 aerial photos." (Department Exhibit 3).

Department Exhibit 2a is a copy of a topographic map which was made from aerial photographs taken in 1978. This map shows no evidence of channels 2 and 3. However it is possible that the two channels were not shown on the topographic map because they were shallow. Mr. Allen used topographic maps and aerial photographs and not soil survey maps (Appellant's Exhibit C) because he does not think soil survey maps are as reliable as topographic maps.

There are many obstructions in Otter Creek where channels two and three meet. There are trees just south of where the channels join the original creek channel.

Mr. Allen's supervisor is Mr. Jack Riessen. Mr. Allen told Mr. Riessen what he had observed and showed him the photographs he had taken during the inspection. Mr. Riessen has never gone to the Heaberlin property to inspect it. He based his conclusions on the observations made by Mr. Allen, the photographs taken at

Department Exhibit 17 is an aerial photograph taken October 16, 1967. Mr. Alender testified this photograph showed what the soil survey map identified as intermittent streams crossable and not crossable by farm implements in the area of channel two and just north of channel three.

Mr. Alender testified the Shields and King channel changes made significant changes in the flow of Otter Creek, and those channel changes caused the stream flow to move faster than it had before the channel changes. His opinion is that these channel changes significantly sped up the erosion of channel two.

Mr. Alender does not believe that Mr. Hart's removal of the fencelines and clearing of brush had a significant effect on erosion in the area.

Mr. Alender's opinion is that the water traveling through channel two and the obstructions downstream of the entrance to channel three caused erosion which ate into the soil at the channel entrance. He also believes during high water the creek channel overflowed and water flowed through channel three.

It is therefore Mr. Alender's opinion that channels two and three were caused by the action of running water, and not by man.

(testimony of Mr. Alender; Department Exhibits 6, 8, 11, 12, 17; Appellant's Exhibits A, C, D, E).

13. Mr. Kevin Ball testified that channels two and three have changed significantly during the time he has farmed the area (the fall of 1984 to the present). Channel two is much deeper. The area still floods. There was a fork in channel two, and the south fork has silted shut. He used to be able to cross channel three, but can do so no longer. (testimony of Mr. Ball).

14. The Department holds the landowner responsible for work done on his or her property whether or not it was actually the landowner who did the work. The Department does not know who did the work on the Heaberlin property. (testimony of Mr. Riessen).

#### CONCLUSIONS OF LAW

Iowa Code section 455B.275 (1) (1985) provides that:

"A person shall not permit, erect, use or maintain a(n) . . . excavation in or on a floodway or flood plains, which will adversely affect the efficiency of or unduly restrict the capacity of the floodway, or adversely affect the control, development, protection, allocation, or utilization of the water resources of the state, and the same are declared to be public nuisances."

Iowa Code section 455B.275(3)(1985) provides that:



ENVIRONMENTAL PROTECTION COMMISSION

ITEM 13

INFORMATIONAL

MONTHLY REPORTS

The following monthly reports are enclosed with the agenda for the Commission's information.

1. Rulemaking Status Report
2. Variance Report
3. Hazardous Substance/Emergency Response Report
4. Enforcement Status Report
5. Contested Case Status Report

Members of the department will be present to expand upon these reports and answer questions.

Allan Stokes  
June 7, 1988

June 1, 1988

TO: EPC

FROM: Mike Murphy

RE: Enforcement Report Update

The following new enforcement actions were taken last month:

Name, Location and Field Office Number	Program	Alleged Violation	Action	Date
Marv's Lakeside Tap, Davenport (6)	Drinking Water	Monitoring/Reporting - Bacteria	Order/Penalty	5/3/88
Conoco Gas & West Branch Inn, West Branch (6)	Drinking Water	Monitoring/Reporting - Bacteria	Order/Penalty	5/3/88
Claremont Country Club, Clarion (2)	Drinking Water	Monitoring/Reporting - Bacteria	Order/Penalty	5/3/88
City of Neola (4)	Wastewater	Permit Condition Vio.- Discharge Limits	Order/Penalty	5/3/88
Solar Simplicity, Inc., aka R.J.S. Enterprises Corp. Burlington (6)	Air Quality	Operation Without Permit	Order	5/3/88
City of Marcus (3)	Drinking Water	MCL - Radioactivity	Order/Penalty	5/3/88
Hwy. #3 Mobile Home Park Waverly (1)	Drinking Water	Monitoring/Reporting - Radioactivity	Order/Penalty	5/3/88
Ripley Municipal Water Supply (4)	Drinking Water	Monitoring/Reporting - Bacteria	Order/Penalty	5/3/88
City of Dayton (2)	Drinking Water	Construction Without Permit	Order	5/3/88
City of Hospers (3)	Drinking Water	Construction Without Permit	Order/Penalty	5/3/88
First Place Lanes, Audubon (4)	Drinking Water	Monitoring/Reporting - Bacteria and Nitrate	Order/Penalty	5/3/88
Milo Chalfant, Bob Miller, Kurt Miller, James Laughlin, Webster City (2)	Solid Waste	Open Dumping	Order/Penalty	5/3/88
City of Waterloo (2)	Wastewater	Treatment Violations	Amendment to Order	5/3/88

BEFORE THE IOWA DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF:  
Stan Moser

) DIA NO. NHS 880167  
) Findings of Fact, Conclusions  
) of Law, Decision and Order

On November 3, 1987, the Iowa Department of Natural Resources (Department) issued Administrative Order No. 87-SW-26 to Mr. Stanley Moser, the appellant. The Order ordered Mr. Moser to stop unpermitted solid waste disposal, to remove solid wastes disposed of on his property on or about April 30, 1987, and to pay an administrative penalty of \$250.

On December 4, 1987, Mr. Moser filed notice of appeal of the above administrative order.

Notice of Hearing was issued on December 22, 1987. On January 7, 1988, Mr. Moser wrote a letter to the undersigned hearing officer. On January 11, 1988, the undersigned hearing officer sent a letter to Mr. Moser.

Mr. Moser filed his Petition on January 26, 1988. The Department filed its Answer on February 8, 1988.


The Department also filed a motion for a continuance on February 8, 1988. An Order continuing the hearing was issued on February 15, 1988, setting the hearing for March 7, 1988.

On March 4, 1988, Mr. Moser called the office of the undersigned hearing officer. On March 6, 1988, Mr. Moser told the undersigned hearing officer in a telephone conversation that he had not received requested information from the Department, and had not received an answer from the Department. Mr. Moser was twice offered a continuance of the hearing, which he declined.

On March 7, 1988, the hearing was held in the fifth floor east conference room, Wallace State Office Bldg., 900 E. Grand, Des Moines, Iowa 50319. Mr. Moser was present and was unrepresented by counsel. Mr. Michael Murphy appeared for the Department. The undersigned hearing officer presided.

At the hearing, Mr. Moser moved that the department's action be dismissed because he had not received information he had requested from the department. Mr Moser had received the department's Answer. Upon discussion at the hearing, the information requested either had been given, was given at the hearing, did not involve Mr. Moser's case, did not exist, or was not known by the Department or not within the Department's control. The attorney for the Department had told Mr. Moser that he was free to look in the Department's files in Des Moines, and in the Manchester office. Mr. Moser had received some requested

Either party may appeal this decision by filing a written notice of appeal with the executive director of the Iowa Department of Natural Resources, Wallace Bldg., 900 E. Grand, Des Moines, Iowa 50319, within thirty days of receipt of this decision and order. Dated this 12<sup>th</sup> day of April, 1988.

  
Amy Christensen Couch  
Hearing Officer  
Department of Inspections and Appeals  
Lucas State Office Building  
Des Moines, Iowa 50319-0083

ACC/nln

copy to:

Mr. Stan Moser  
Mr. Michael Murphy

- Department Exhibit 10 Letter dated 4-12-85 from Fremont county Engineer to Brad Barrett, Iowa Department of Water, Air and Waste Management (DWAWM).
- Department Exhibit 11 Field Inspections Report by Brad Barrett dated 5-17-85.
- Department Exhibit 12 Letter dated 6-20-85 to W.P. Brandt from Randy Clark and attached memo dated 6-7-84.
- Department Exhibit 13 Letter dated 8-8-86 to Jack D. Riessen from H. Lloyd Heim.
- Department Exhibit 14 Reese Levee profiles at points A,B,C, & D prepared by Jack Riessen.
- Reese Exhibit A. United States Department of the Interior Geological Survey (USGS) Topographic Map - Riverton, Iowa dated 1981 (based on 1976 aerial photographs).
- Reese Exhibit B. Profile of flow confined to Levees (plots of discharges along the E. Nishnabotna prepared by Sulo Wiitala.
- Reese Exhibit C. Profile of flow confined to Levees (plots of discharges along the W. Nish prepared by Sulo Wiitala.
- Reese Exhibit D. Profile of flow confined to Levees (plots of discharges along the Nishnabotna) prepared by Sulo Wiitala.
- Reese Exhibit E. Chart of channel Cross Sections at Cableway-Nishnabotna River above Hamburg 1956-1987.
- Reese Exhibit F. Same as E, except updated on 6-26-87, represented by red line - G.
- Reese Exhibit G. (Records from 1971-1986 of gross and net income for Reese farm and expenditures for drainage work) STRICKEN.
- Reese Exhibit H. Photograph taken May 1987 of ramp construction for 22 club.
- Reese Exhibit I. Photo taken May 1987 of 22 club's chain link gate at N.W. corner of Reese Levee.
- Reese Exhibit J. Photo of 22 club roadway.
- Reese Exhibit K. Photo " " and W. Nish in background.

experienced because it now effectively seals off the conveyance area for flood flows when one river is at a higher stage than the other. Miller urged the Department to take action despite its letter of January 19, 1984 stating that the raising of the access road has "changed entirely the complexion of the area since the court rendered its previous decision."

(Testimony of Larry Whitehead, Jack Riessen; Department Exhibits 9,10)

12. Two members of the Twenty-Two Club testified that they had observed work being done on the Reese levee over a long period of time. They testified that while they had not actually observed the levee system being raised, they felt that it had been raised since they could no longer see over the top of the levee system from their road. They testified that years ago they could see the Reese fields over the top of the levee from their roadway. However there was also testimony that the 22 club road had been lowered over the years through the consistent use of a grader on the road following flooding.

(Testimony of Norman Kling, Dale Castle, Lloyd Heim)

13. On June 20, 1985, Randall Clark, compliance officer, wrote the District Manager of Farmers National Company and informed him that despite two extensions of time granted to file the requested permit application and engineering plans, the application had not yet been filed. A new deadline of July 17, 1985 was set. Clark also informed Farmers National that the Department had now decided to assert its jurisdiction over the access ramp. The Department changed its position on asserting jurisdiction because the ramp had been elevated and because of the complaint of the Fremont county Engineer that County Road J-46 may be adversely affected.

(Department Exhibit 12)

14. The permit application for after-the-fact approval and engineering plans were submitted and Flood Plain Permit FP-86-181 dated November 14, 1986 authorized appellant to maintain its levee system and access ramp, subject to certain modifications and conditions. The permit requires appellant to degrade the levee tops at points A,B,C, and D (see Department Exhibit 1) and specifies that the levee elevations between these referenced points can be no higher than the straight line interpolation between the maximum allowed elevations at those points. Some of the Reese levee is lower than the permitted height and could therefore be raised. The permit further specifies that the field access ramp from J-46 shall be degraded so that the maximum roadgrade elevation over the existing culverts is not higher than 927.0 NGVD. The permit authorizes appellant to construct a down ramp along the east-west levee immediately south of county road J-46.

(Record 1, Department Exhibit 1 Testimony of Jack Riessen)

15. Current heights of points A,B,C, and D on the Reese levee system are as follows:

- A - 939.87 National Geodetic Vertical Datum (NGVD)
- B - 929.9 NGVD

Riessen estimates that after the required degradation of the levee tops, the remaining levee would provide protection from approximately a ten year recurrent interval flood. Riessen testified that he did not consider the Reese levee to be "comprehensive" and thereby entitled to greater protection. Riessen testified that he interprets "comprehensive" to mean a levee that extends for many miles as part of a unified system with a common purpose such as would be constructed by an organized levee district in the State of Iowa. Riessen conceded that the Reese levee was comprehensive with respect to the Reese land, which it completely encircles.  
(Testimony of Jack Riessen; Record 2)

#### CONCLUSIONS OF LAW, DECISION AND ORDER

1. The Iowa Natural Resources Council was created on April 16, 1949 (1949 Acts, Chapter 203) and received floodway permit authority on May 15, 1957 (1957 Acts, Chapter 229, Section 22)

Iowa Code §455A.33, unnumbered paragraph 3 (1958), provided:  
"In the event any person desires to erect or make, or to suffer or permit, a structure, dam, obstruction, deposit or excavation,... to be erected, made, used or maintained in or on any floodway, such person shall file a written verified application with the Council, setting forth the material facts, and the Council on hearing, shall enter an order, determining the fact and permitting or prohibiting the same."

This permit authority was expanded to include the entire floodplain on July 4, 1965 (1965 Iowa Acts, Chapter 373, Section 2)

2. Iowa Code 455B.261 defines "floodplains" and "floodway" as follows:

1. "Flood plains" means the area adjoining a river or stream which has been or may be covered by flood water.

2. "Floodway" means the channel of a river or stream and those portions of the floodplains which are reasonably required to carry and discharge the flood water or flood flow of any river or stream."

3. The Reese levee lies in the floodway of the East and West Nishnabotnas, hence effective May 15, 1957 a permit was required to raise or modify the levee. See Finding of Fact 26. The northwest corner of the levee was moved in 1964 to enclose an additional twenty or so acres of newly acquired land. The levee was raised in 1970 and 1972. In 1981, the access road was raised. All of these raises and modifications to the levee were performed without a permit from the Department.

The Department has the authority to require Eloise Reese to apply for after the fact approval for the changes made to the levee after May 15, 1957. Iowa Natural Resources Council v. Van Zee, 158 NW 2d 111 (Iowa 1968); Martin v. Natural Resources Council,

public use without just compensation in derogation of Section 18, Article I of the Constitution of Iowa and Amendments 5 and 14 of the United States Constitution.

The Iowa Supreme Court has held that a vital resource such as water must be subject to regulation by the state under the police power. In the absence of a showing by a complaining property owner that restraint imposed upon him outweighs the collective benefit to the people of the state it cannot be said there is an illegal taking. Iowa Natural Resources Council v. Van Zee, 158 NW 2d 111,117 (Iowa 1968) The appellant in this case failed to make such a showing, and therefore Flood Plain Permit FP 86-181 is not an illegal taking.


14. Appellant also alleges that the procedure followed by the Department deprives her of her rights and property without due process of law contrary to Section 9, Article I of the Constitution of Iowa and Amendments 5 and 14 to the Constitution of the United States of America.

The Department's permit procedure allowed appellant opportunity to submit comments prior to its issuance. Moreover, the appeal procedure found at Iowa Code 455B.278 afforded appellant the right to appeal the permit and its conditions.

Appellant did appeal, and a contested case hearing was held in accordance with Chapter 17A of the Iowa Code. This procedure fully protected the due process rights of the appellant.

Therefore, it is hereby ORDERED that the issuance of Flood Plain Permit Number FP 86-181 to Eloise Reese c/o Farmer's National Company, Omaha, Nebraska, is affirmed.

Dated this 20<sup>th</sup> day of May, 1988.

  
Margaret LaMarche  
Hearing Officer  
Iowa Department of Inspections  
and Appeals  
Lucas State Office Building  
Second Floor  
Des Moines, Iowa 50319-0083


ML/nlh



forward to show the basis for its decision and the permit conditions." The Department has failed to carry its burden with regard to the application of flood slope and mathematical application thereof to the Reese levee. It must be required to do so.

For all the reasons above stated, rehearing on these points at issue should be granted to Eloise Reese.

Respectfully submitted,

  
James C. Davis  
Skywalk Suite 203  
700 Walnut Street  
Des Moines, Iowa 50309  
515/ 282-6095

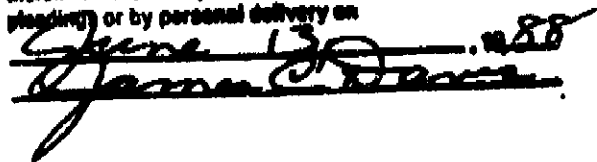
ATTORNEY FOR APPELLANT  
ELOISE W. REESE

Copy to:

Randall L. Clark  
Compliance Officer  
Iowa Department of Natural Resources  
Wallace State Office Building  
Des Moines, Iowa 50319

**PROOF OF SERVICE**

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause by depositing a copy thereof in the U.S. mail, postage prepaid, in envelopes addressed to each of the attorneys of record therein at their respective addresses disclosed on the pleadings or by personal delivery on

 . 12.88

IOWA DEPARTMENT OF NATURAL RESOURCES  
ENVIRONMENTAL PROTECTION COMMISSION

ITEM 10A

DECISION

PROPOSED CONTESTED CASE DECISION: ERNEST AND KEVIN GRADERT

On August 28, 1987, the department issued administrative order 87-AQ-17 to Ernest and Kevin Gradert. That action assessed a penalty of \$500.00 and directed that open burning cease. That action was appealed and the matter proceeded to administrative hearing on May 27, 1988. The hearing officer issued the attached Proposed Findings of Fact, Conclusions of Law, and Order on June 7, 1988. The decision affirmed the order but reduced the penalty to \$150.00.

Either party may appeal the Proposed Decision to the Commission. In the absence of an appeal, the Commission may decide on its own motion to review the Proposed Decision. If there is no appeal or review of the Proposed Decision, it automatically becomes the final decision of the Commission.

Mike Murphy  
Government Liaison Bureau  
June 14, 1988

88166DNR0008

requirements. Mr. Gradert erroneously believed he was complying with the Department's requirements.

#### CONCLUSIONS OF LAW

1. 567 Iowa Administrative Code 23.1(2) provides:

"Prohibition. No person shall allow, cause or permit open burning of combustible materials, except as provided in 23.2(2) and 23.2(3)."

2. 567 Iowa Administrative Code 23.2(2) provides:

"Variances from rules. Any person wishing to conduct open burning of materials not exempted in 23.2(3) may make application for a variance as specified in 21.2(1)."

3. 567 Iowa Administrative Code 23.2(3) provides in relevant part:

"Exemptions. The following shall be permitted unless prohibited by local ordinances or regulations.

g. Training fires. Fires set for the purpose of bona fide training of public or industrial employees in fire fighting methods, provided that the director receives notice in writing at least one week before such action commences."

4. Iowa Code 455B.109 (1987) authorizes the commission to establish, by rule, a schedule or range of civil penalties which may be administratively assessed. In adopting a schedule or range of penalties and in proposing or assessing a penalty, the commission and director shall consider among other relevant factors: a) the costs saved or likely to be saved by noncompliance by the violator, b) the gravity of the violation, c) the degree of culpability of the violator, d) the maximum penalty authorized for that violation.

5. 567 Iowa Administrative Code 10.2 provides in relevant part:

567--10.2(455B) Criteria for screening and assessing administrative penalties. All formal enforcement actions are processed through the legal services division of the department. The legal staff shall screen each case to determine the most equitable and efficient means of redressing and abating the violation. In evaluating a violation for purposes of screening the violation to determine which cases may be appropriate for administrative assessment of penalties or for purposes of assessing administrative penalties, the department will consider among other relevant factors the following:

BEFORE THE IOWA DEPARTMENT OF NATURAL RESOURCES

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IN THE MATTER OF:	)	DOCKET NO: 86-CC-37
	)	DIA NO: NHS 870019
Francis Heaberlin	)	
	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF
	)	LAW, DECISION
	)	AND ORDER

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This case involves a channel change on the Otter Creek flood plain. The Department of Natural Resources (Department) issued Administrative Order No. 86-FP-4 to Francis and Velma Heaberlin on November 25, 1986. The Heaberlins filed Notice of Appeal from the Administrative Order on December 24, 1986.

A Notice of Hearing was sent on January 9, 1987. The Heaberlins filed their Petition on February 2, 1987. The hearing was continued by Order dated February 19, 1987. The Department filed its Answer on February 20, 1987. The hearing was continued again by Order dated March 24, 1987. On September 14, 1987, an Order was issued setting a telephone prehearing conference and a new hearing date. On November 16, 1987, an Order was issued continuing the prehearing conference and the hearing.

The hearing was held on January 25, 1988 in the fifth floor conference room, Wallace State Office Building, 900 E. Grand, Des Moines, Iowa. The Heaberlins were represented by James F. Fowler, attorney, and the Department was represented by Randall L. Clark, attorney. The undersigned hearing officer presided.

THE RECORD

The evidentiary record in this case includes the above pleadings and orders, the recorded testimony of the witnesses, and the following Exhibits:

Appellant's Exhibit A -	copy of a 1982 aerial photograph.
Appellant's Exhibit B -	memo dated 1/28/86 by Dave Allen.
Appellant's Exhibit C -	Warren County, Iowa soil survey.
Appellant's Exhibit D -	photograph dated 12/18/87.
Appellant's Exhibit E -	photograph dated 1/13/88.
Department's Exhibit 1 -	memo dated 7/23/85 by Dave Allen.
Department's Exhibit 2 -	transparency of a topographic map.
Department's Exhibit 2a -	copy of a topographic map.
Department's Exhibit 3 -	memo dated 7/24/85 by Dave Allen.
Department's Exhibit 4a -	photograph dated 7/24/85.
Department's Exhibit 4b -	photograph dated 7/24/85.
Department's Exhibit 4c -	photograph dated 7/24/85.
Department's Exhibit 4d -	photograph dated 7/24/85.
Department's Exhibit 4e -	photograph dated 7/24/85.

the site, and maps of the area. Mr. Riessen is the supervisor of the Department flood plain section and is a professional engineer. He has been working with flood plain matters for the department since 1970. Mr. Riessen believes that the cause of channels two and three was not purely a natural happening, and that someone at sometime did something on the property to cause the channel changes. He bases this belief on a number of factors. The first is the alignment of the channels. Mr. Riessen testified that channels two and three are not in areas where a channel change would be likely to occur naturally. He identified two places on Department Exhibit 2 where it would be likely that a river would naturally cut through, neither of which was pilot channel two or three. Mr. Riessen testified it would be an extremely unusual event for a channel change as in channels two and three to have occurred naturally.

Mr. Heaberlin's position is that the upstream landowners' channel changes led to the channel changes which occurred on his property. Mr. Riessen testified this would be highly unlikely because usually the impact of channel changes causing other channel changes is felt upstream not downstream.

In nature, very rarely if at all do channel changes occur in a straight line. Based on Exhibit 2, it appears that channels two and three are relatively straight. This led Mr. Riessen to suspect that channels two and three had occurred because of some human intervention.

Mr. Riessen also based his conclusion on photographs taken at the site. He testified the basic channel shape of channel two shown on Department Exhibit 4b was not what is seen in Iowa as a typical natural channel. The channel is parabolic or dish-shaped, which also led Mr. Riessen to believe the channel was excavated, because typically channels do not evolve that way in Iowa.

Department Exhibit 4d is a photograph of the entrance to channel three looking downstream. It was taken in 1985. Mr. Riessen testified that the appearance of this channel was very different from channel two. He testified this channel had a much more natural channel appearance with cut banks and a certain degree of meandering.

Department Exhibit 4e is a photograph of the midpoint of channel three looking downstream. It was taken in 1985. Mr. Riessen testified this channel had somewhat of a more parabolic shape, but further downstream were some cut banks showing there was some erosion. He testified this was not a completely natural looking channel, but there had been some erosion so that the channel looked in transition between channel two in Department Exhibit 4b and a more natural channel.

Department Exhibit 16d is a photograph of the entrance to channel three taken in 1988. The channel has eroded so that it has

If a person desires to erect or make or to permit a(n) . . . excavation . . . to be erected, made, used, or maintained in or on any floodway or flood plains, the person shall file a verified written application with the department...".

Mr. Heaberlin has consistently maintained that he did not take any action, nor did he permit anyone else to take any action, which caused the channel changes on his portion of Otter Creek. He maintains that the channel changes were the result of the action of running water, were not caused by human intervention, and are therefore not "excavations" within the meaning of the statute.

567 (formerly 900) Iowa Administrative Code section 71.2 provides that departmental approval for the "construction, operation, and maintenance of channel changes" is required in rural areas when the stream drains more than ten square miles at the location of the channel change.

567 (formerly 900) Iowa Administrative Code section 71.11(1) provides that in rural areas, departmental approval for excavations on flood plains of rivers and streams draining more than ten square miles is required when the excavation is within one hundred feet of the normal stream or river bank.

"Channel change" means either (a) the alteration of the location of a channel of a stream or (b) a substantial modification of the size, slope, or flow characteristics of a channel of a stream for a purpose related to the use of the stream's flood plain surface rather than for the purpose of actually using the water itself, or putting the water to a new use (Note: Diversions of water subject to the permit requirements of Iowa Code sections 455B.268 and 455B.269 usually are not channel changes). Increasing the cross-sectional area of a channel by less than ten percent is not considered a substantial modification of the size, slope, or flow characteristics of a channel of a stream." 567 I. A. C. 70.2.

"Excavation" is undefined in the statutes and rules. As defined in Webster's New International Dictionary (2d ed. 1944), excavation means "2. A cavity formed by cutting, digging, or scooping."

There is an underlying assumption in the statutes and rules that in order to be regulated by the department, excavations and channel changes must have been caused by some human activity, as opposed to being caused "naturally" by the action of running water. If a channel change or excavation occurred "naturally", with no human intervention, the department would not have jurisdiction to order the landowner or anyone else to submit an application or restore the area.

Since without proof that there was a humanly caused excavation the Department would have no jurisdiction, the Department has the burden of proving the existence of a man-made (as opposed to

STATE DEPARTMENT OF NATURAL RESOURCES  
 ENVIRONMENTAL PROTECTION COMMISSION  
 BULKHEAD STATE REPORT  
 JULY 31, 1988

PROPOSAL	DRAFT TO COMMISSION	NOTICE PUBLISHED	RULES REVIEW COMMITTEE	HEARING	SUMMARY OF COMMENTS & RECOMMENDATIONS TO COMMISSION	RULES ADOPTED	RULES PUBLISHED	RULES EFFECTIVE
1. Ch. 6 - Bulkheading Procedures	2/15/88	3/8/88	4-19-88	---	5/16/88	5/16/88	6/15/88	6/28/88
2. Ch. 5 - Petition for Bulkheading	2/15/88	3/8/88	4-19-88	---	5/16/88	5/16/88	6/15/88	6/28/88
3. Ch. 7 - Contested Case Procedures	3/21/88	4/28/88		---				
4. Ch. 29, 22, 24, 28 M20	6/28/88			6/28/88 6/15/88 6/22/88				
5. Ch. 27 - Air Quality Permitting	5/25/88	5/18/88		6/28/88 6/15/88 6/22/88				
6. Ch. 38 - Private Well Construction Permit	12/15/87	1/13/88	3/8/88	2/23/88 2/25/88 2/28/88	4/25/88	4/25/88	5/18/88	6/22/88
7. Ch. 39 - Well Plugging	3/21/88	4/21/88	5/18/88	5/12/88 5/13/88 5/16/88				
8. Ch. 40, 41 - Water Supply	4/25/88	5/18/88		6/13/88 6/14/88 6/15/88				
9. Ch. 47 - Grants to Counties	2/15/88	3/8/88	4/18/88	3/29/88 5/31/88 6/24/88	4/25/88	4/25/88	5/18/88	6/22/88
10. Ch. 51 Agricultural Drainage Halls					6/28/88			
11. Ch. 76 - Channel Changes	4/25/88	5/18/88		6/28/88				
12. Ch. 100, 103, 110 - Landfill Ground Water Monitoring	10/28/87	11/18/87	12/18/87	1/26/88 1/27/88 1/28/88	5/16/88	5/16/88	6/15/88	6/28/88

unprojected

Name, Location and Field Office Number	Program	Alleged Violation	Action	Date
Hardin Co. Sanitary Solid Waste Disposal Commission (2)	Solid Waste	Daily Operation	Amendment to Order	5/3/88
Blanchi-Meyrat Lagoon, Mt. Ayr (5)	Wastewater	Monitoring/Reporting	Amendment to Order	5/4/88
Bill Kaough, Fertile (2)	Air Quality	Open Burning	Order/Penalty	5/9/88
The Hayloft Tavern, Grant (4)	Drinking Water	Monitoring/Reporting - Bacteria	Order/Penalty	5/9/88
Boxholm Water Supply (5)	Drinking Water	Monitoring/Reporting - Bacteria	Order/Penalty	5/9/88
Bill Kaough, Fertile (2)	Air Quality	Open Burning	Order/Penalty	5/19/88
City of Malcom (5)	Wastewater	Certified Operator	Order/Penalty	5/19/88
Dumont Auto Parts, Dumont (2)	Air Quality	Open Burning	Order/Penalty	5/19/88
Winnebago Industries, Inc. Forest City (2)	Air Quality	Construction Without Permit	Order/Penalty	5/23/88
City of Lake Mills (2)	Drinking Water	Construction Without Permit	Order	5/23/88
Wiltgen Construction Co., Calmar (1)	Solid Waste Air Quality	Open Dumping Open Burning	Order/Penalty	5/23/88
Jesco's Steakhouse Lounge, Castana (4)	Drinking Water	Monitoring/Reporting - Bacteria & Nitrate	Order/Penalty	5/31/88
Superior-Ideal, Inc. Oskaloosa (5)	Wastewater	Pretreatment	Order/Penalty	5/31/88
Ernest Nelson, Rowan (2)	Solid Waste	Open Dumping	Order/Penalty	5/31/88



information from the Manchester office. The only item of information which Mr. Moser requested and did not receive for other than the above reasons was a request for the seating capacity of the hearing room. The undersigned hearing officer ruled that there was no prejudice to Mr. Moser, and the hearing proceeded.

The record was left open for 10 days following the hearing so that Mr. Moser could submit additional evidence of statements by Mr. Jerry Ratenburg regarding alleged violations by the City of Hudson. The Department was given 10 days following receipt of that evidence to make any objection.

On March 9, 1988, Mr. Moser called and left a message for the undersigned hearing officer to call him. On March 10, 1988, the undersigned hearing officer initiated a conference call with Michael P. Murphy and Mr. Stan Moser. Mr. Moser was not present, but left a note for his son to read. Mr. Moser alleged in the note that Mr. Murphy was covering up and delaying Mr. Moser getting information from the Manchester office. Mr. Moser's son stated that Mr. Moser was out of town and he was not sure when he would be back. Mr. Murphy responded that he had told the Manchester office that if the requested information was for the purposes of the hearing, and was beyond the statements by Mr. Ratenburg, Mr. Moser was to submit a written request. If the request was for any other purpose, the office was to give Mr. Moser the information. The undersigned hearing officer ruled that: (1) Mr. Murphy was to direct the Manchester office to provide Mr. Moser with whatever information he requested; and (2) what came in as evidence would be ruled on when the evidence was submitted. Mr. Moser's son was directed to tell Mr. Moser to call if he had questions, and that he had until March 17, 1988 to submit his additional evidence.

On March 15, 1988, Mr. Moser called the undersigned hearing officer. A conference call was held. Mr. Moser again stated that the Manchester office would not send him information. Mr. Murphy stated that he had instructed the field office to send him any information. The undersigned hearing officer asked Mr. Moser if he had requested the information since the previous telephone call. Mr. Moser stated he had not, and that he was going to drop it and not submit additional evidence. The undersigned hearing officer suggested that it might be helpful for Mr. Moser to consult with an attorney regarding procedure.

#### THE RECORD

The evidentiary record in this case consists of the recorded testimony of the witnesses, the above pleadings, letters and orders, the additional evidence stated above, and the following exhibits:

Hearing Officer Exhibit 1 - Certified letter unclaimed by Mr. Stanley Moser.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ENVIRONMENTAL PROTECTION COMMISSION

ITEM 10

DECISION

PROPOSED CONTESTED CASE DECISION: ELOISE REESE

On November 14, 1986, the department issued Flood Plain permit FP 86-181 to Eloise Reese. That action authorized maintenance of a previously constructed levee system, with the stipulation that it be partially degraded to specified elevations. That action was appealed and the matter proceeded to administrative hearing on March 8 and 9, 1988. The hearing officer issued the attached Proposed Findings of Fact, Conclusions of Law, and Order on May 20, 1988. The decision affirms the department's permit, as issued.

Either party may appeal the Proposed Decision to the Commission. In the absence of an appeal, the Commission may decide on its own motion to review the Proposed Decision. If there is no appeal or review of the Proposed Decision, it automatically becomes the final decision of the Commission.

Mike Murphy  
Government Liaison Bureau  
May 25, 1988

88146DNR0006

<b>Reese Exhibit L.</b>	<b>Photo of view from Riverton shows county road J-4.</b>
<b>Reese Exhibit M.</b>	<b>Aerial photo looking north.</b>
<b>Reese Exhibit N.</b>	<b>Aerial photo looking W to E - shows J-46.</b>
<b>Reese Exhibit O.</b>	<b>Aerial photo looking -shows state grounds and confluence of two rivers.</b>
<b>Reese Exhibit P.</b>	<b>Aerial photo looking N- shows S &amp; E dike.</b>
<b>Reese Exhibit Q.</b>	<b>Affidavit of Eloise Reese.</b>
<b>Reese Exhibit R.</b>	<b>Affidavit of Eloise Reese.</b>
<b>Reese Exhibit S.</b>	<b>Department computer print-out of permits for levees in East and West Nishnabotna basins.</b>
<b>Reese Exhibit T.</b>	<b>Memoranda from U.S. Army Corps of Engineers.</b>
<b>Reese Exhibit U.</b>	<b>U.S. Army Corps of Engineers Natural Disasters Procedure Booklet, page 5-1.</b>
<b>Reese Exhibit V.</b>	<b>Map indicating levee location and recent work on levees in area.</b>
<b>Reese Exhibit W.</b>	<b>Photograph of levee construction in Riverton township.</b>
<b>Reese Exhibit X.</b>	<b>Photograph of levee construction in Riverton township.</b>
<b>Reese Exhibit Y.</b>	<b>Aerial photo looking E at reconstructed levee.</b>
<b>Reese Exhibit Z.</b>	<b>Aerial photo looking E at reconstructed levee.</b>
<b>Reese Exhibit AA</b>	<b>Aerial photo looking east at reconstructed levee.</b>
<b>Reese Exhibit BB</b>	<b>February 1988 photo of culvert.</b>

**For identification purposes at the hearing, Flood Plain Permit FP 86-181 was designated as Record 1, the Flood Plain Project summary report was designated as Record 2, and the addendum to the summary report was designated as Record 3.**

#### **FINDINGS OF FACT**

C - 929.79 NGVD

D - 932.7 NGVD

The permit requires these points to be degraded to the following heights:

A - 932.0 NGVD

B - 928.5 NGVD

C - 928.5 NGVD

D - 932.0 NGVD

(Testimony of Jack D. Riessen, Record 1; Department Exhibit 14)

16. (U.S.G.S) Gauging Stations are located along the east stem of the Nishnabotna at Red Oak, Iowa, along the west stem of the Nishnabotna at Randolph, Iowa, and on the Nishnabotna below the confluence at Hamburg. A flow of water gauged at 30,000 cubic feet per second (c.f.s) at the Hamburg station would be a little less than a ten year recurrent interval flood. A ten year recurrent interval flood is the magnitude of the flood which on average will be met or exceeded once every ten years. It is difficult to estimate the flows at the Reese levee based upon the flows at the Hamburg gauging station. Some of the flows at Hamburg will have come from the East Nishnabotna and some from the West Nishnabotna. In addition, the possibility of flow migration between the East and West Nishnabotna in the equalization area near J-46 makes it difficult to estimate actual flows in either branch at the Reese levee. If the Hamburg gauging station shows a total C.F.S. of 32,000, the actual flows at the Reese property could split 30,000 c.f.s in one branch of the river and 2,000 c.f.s. in the other. The levee heights permitted for points A,B,C,D in FP-86-181 provide protection for approximately a ten year recurrent interval flood.

(Testimony of Jack D. Riessen)

17. Jack D. Riessen is the supervisor of the Flood Plain Section of the Department. In this position, he is responsible for issuing all flood plain development permits. In the case of Flood Plain Permit FP 86-181, Mr. Riessen was responsible for both the technical analysis underlying the permit and the permit issuance. Riessen has been employed by the Department and its predecessor agencies since June 1970. He has his B.S. degree in agricultural engineering, is a registered professional engineer, and has attended the Institute of River Mechanics and graduate courses in hydrology and hydraulics.

(Testimony of Jack D. Riessen)

18. Sulo W. Wiitala is a hydrologist employed by Shive Hattery Engineers in Iowa City, Iowa; and is a registered professional engineer. Mr. Wiitala has a B.S. degree in Civil Engineering and worked for the United States Geological Survey (USGS) Water Resources Division from 1940-1978. While employed at USGS, Wiitala was responsible for collecting, analyzing, and publishing data on rivers and streams. Using the same slope as Riessen determined by HRC 2 computer run, Wiitala calculated what heights points C and D on the levee should be to protect against a ten year frequency interval confined flood. A confined flood is a flood that is confined within the levee system. Assuming 32,000

330 NW 2d 790 (Iowa 1983). In addition, the Department has the authority to impose conditions on the grant of an after-the-fact flood plain development permit. This includes the authority to require relocation and/or degradation of levees. Osborne v. Iowa Natural Resources Council, 336 NW 2d 745 (Iowa 1983). Young Plumbing and Heating v. Iowa Natural Resources Council, 276 NW 2d 377 (Iowa 1979).

4. Iowa Code Section 455B. 276 authorizes the commission to establish and enforce rules for orderly development and wise use of the flood plains of any river or stream within the state.

Iowa Code §455B.264(3) (1987) provides that: "Upon application by any person for approval of the construction or maintenance of any structure, dam, obstruction, deposit, or excavation to be erected, used, or maintained in or on the flood plains of any river or stream, the department shall investigate the effect of the construction or maintenance project on the efficiency and capacity of the floodway. In determining the effect of the proposal the department shall consider fully its effect on flooding of or flood control for any proposed works and adjacent lands and property, on the wise use and protection of water resources, on the quality of water, on fish, wildlife, and recreational facilities or uses, and on all other public rights and requirements."

Iowa Code §455B.275(1) (1987) provides that: "A person shall not permit, erect, use or maintain a structure, dam, obstruction, deposit, or excavation in or on a floodway or flood plains, which will adversely affect the efficiency of or unduly restrict the capacity of the floodway, or adversely affect the control, development, protection, allocation, or utilization of the water resources of the state, and the same are declared to be public nuisances. However, this subsection does not apply to dams constructed and operated under the authority of chapter 469."

The administrative rules promulgated to regulate flood plains were, at the time permit FP-86-181 was issued, found at Chapter 900 of the Iowa Administrative Code. The flood plain rules are currently found at Chapter 567 of the Iowa Administrative Code. The rules referenced below have not changed.

5. 900 Iowa Administrative Code 71.4(1) provided  
"900-71.4 (455B) Levees or dikes. Approval by the department for construction, operation, and maintenance of levees or dikes shall be required in the following instances. 71.4(1) Rural areas. In rural areas, any levees or dikes located on the flood plain or floodway of any stream or river draining more than ten square miles."

6. 900 Iowa Administrative Code 72.4(1)(a)(b) and (d) provided:  
"900-72.4(455B) Levees or dikes. The following criteria shall apply to levees or dikes.  
a. Level of protection. The permanent height of agricultural levees or dikes normally shall be limited that

cc: James C. Davis  
Attorney at Law  
Skywalk Suite 203  
700 Walnut Street  
Des Moines, Iowa 50309

Randall L. Clark  
Compliance Officer  
Iowa Department of Natural Resources  
LOCAL

BEFORE THE DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF:

Eloise Reese

DEPARTMENT RESISTANCE TO  
APPLICATION FOR REHEARING  
NHS 870016

COMES NOW, the Iowa Department of Natural Resources (Department) and in resistance to the Application for Rehearing filed by Eloise Reese (Appellant) states as follows:

1. Pursuant to 481 Iowa Administrative Code § 10.2(2) the Division of Appeals and Fair Hearings of the Iowa Department of Inspections and Appeals no longer has jurisdiction in this matter in that a proposed decision has been issued.

2. In the event it is determined that the Department of Inspections and Appeals does have jurisdiction in this matter, the application should be denied for the following reasons:

a. Application paragraph 1: Finding of Fact 20 is clearly based on Record 2 (summary report) which is in evidence in this matter.

**BEFORE THE IOWA DEPARTMENT OF NATURAL RESOURCES**

**IN THE MATTER OF:**

**MR. ERNEST GRADERT  
MR. KEVIN GRADERT**

**) FINDINGS OF FACT,  
) CONCLUSIONS OF LAW  
) AND ORDER**

On August 28, 1987, the Iowa Department of Natural Resources (Department) issued Administrative Order 87-AQ-17 to Ernest and Kevin Gradert (appellants), which required them to cease the open burning of all solid waste, to dispose of solid waste in a manner consistent with the requirements of Iowa Code section 455B.307 and the rules of the Department, and to pay a penalty of \$500.00. On September 17, 1987 the appellants appealed from the issuance of Administrative Order 87-AQ-17. A Notice of Hearing set the hearing for December 11, 1987. The hearing was continued to May 27, 1988.

The hearing was held on May 27, 1988 in the fourth floor conference room, Wallace State Office Building, 900 East Grand, Des Moines, Iowa 50319. Representing the parties were Mark Landa, counsel for the Department, and Herman Gradert for the appellants. The undersigned hearing officer presided.

**THE RECORD**

The evidentiary record in this case consists of recorded testimony of the witnesses, the above pleadings, and the following Exhibits:

**DEPARTMENT EXHIBIT 1 - Statement of Ted Krull,  
Chief, Sibley Fire Dept., dated 5-18-87 and  
photograph of burning home on Gradert property  
taken 5-13-87**

**DEPARTMENT EXHIBIT 2 - Affidavit of Ted Krull  
dated 3-9-88**

**FINDINGS OF FACT**

1. On April 2, 1987, Herman Gradert, father of Ernest and Kevin Gradert, called Ted Krull, chief of the Sibley fire department, and asked if he could burn a house on his farm northwest of Sibley, in Viola Township, Section 28, Northwest Quarter. The land and house in question had recently been purchased by Kevin and Ernest Gradert. Herman Gradert handles the business matters for his sons.  
(Testimony of Ted Krull, Department Exhibits 1 and 2, Testimony of Herman Gradert)
2. The substance of the April 2nd telephone conversation is disputed by its two participants. Mr. Krull testified that



10.2(1) Costs saved or likely to be saved by noncompliance by the violator. Where the violator realizes an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit. Reasonable estimates of economic benefit should be made where clear data are not available.

10.2(2) Gravity of the violation. Factors include but are not limited to:

- a. The actual or threatened harm to the environment or the public health and safety.
- b. Involvement of toxic or hazardous substances or potential long-term effects of the violation.
- c. The degree to which ambient or source-specific standards are exceeded, where pertinent.
- d. Federal program priorities, size of facility, or other pertinent factors.
- e. Whether the type of violation threatens the integrity of a regulatory program.
- f. Whether the type of violation threatens the integrity of a regulatory program.
- g. Expenses or efforts by the government in detecting, documenting, or responding to a violation.

10.2(3) Culpability. Factors include but are not limited to:

- a. The degree of intent or negligence. The standard of care required by the laws of the state of Iowa will be considered.
- b. Whether the case involves false reporting of required information, or tampering with monitoring devices.
- c. Whether the violator has taken remedial measures or mitigated the harm caused by the violation.

10.2(4) The maximum penalty authorized for that violation under Iowa Code chapter 455B. The penalty provisions of chapter 455B establish different maximum penalties for different categories of violation. See, e.g.:

10.2(5) Whether the assessment of administrative penalties appears to be the only or most appropriate way to deter future violations, either by the person involved or by others similarly situated.

10.2(6) Other relevant factors. The department will consider other relevant factors which arise from the circumstances of each case.

10.2(7) This screening procedure shall not limit the discretion of the department to refer any case to the attorney general for legal action, nor does this procedure require the commission or the director to pursue an administrative remedy before seeking a remedy in the courts of this state.

Department's Exhibit 4f - photograph dated 7/24/85.  
Department's Exhibit 5 - letter dated 8/6/85 from Dave Allen to King/Shields/Heaberlin (watch for conclusory language re: excavation when considering weight).  
Department's Exhibit 6 - letter dated 8/12/85 from the Heaberlins to the Department.  
Department's Exhibit 7 - letter dated 9/5/85 from the Department to the Heaberlins.  
Department's Exhibit 8 - (admitted for a limited purpose and watch for conclusory language re: excavation) memo dated 11/5/85 by Dave Allen.  
Department's Exhibit 9 - letter dated 1/13/86 from the Department to King/Shields/Heaberlin.  
Department's Exhibit 10 - letter dated 4/3/86 from the Department to King/Shields/Heaberlin.  
Department's Exhibit 11 - memo dated 4/21/86 by Dave Allen.  
Department's Exhibit 12 - telephone memo dated 5/23/86 by Dave Allen.  
Department's Exhibit 13 - letter dated 6/10/86 from the Department to King/Shields/Heaberlin (watch for conclusory excavation language).  
Department's Exhibit 14 - letter dated 11/10/87 from the Department to Mr. Shields.  
Department's Exhibit 15 - letter dated 12/14/87 from the Department to King Management Co.  
Department's Exhibit 16 - memo dated 12/18/87 and 1/13/88 by Dave Allen, photo index, and map  
Department's Exhibit 16a - photograph dated 1/13/88.  
Department's Exhibit 16b - photograph dated 1/13/88.  
Department's Exhibit 16c - photograph dated 1/13/88.  
Department's Exhibit 16d - photograph dated 1/13/88.  
Department's Exhibit 16e - photograph dated 1/13/88.  
Department's Exhibit 17 - aerial photograph dated 10/16/87.  
Department's Exhibit 18 - aerial photograph dated 9/26/77.

#### **FINDINGS OF FACT**

1. Francis and Velma Heaberlin are the owners of real property located in Warren County, Iowa described as the SW 1/4 of the NW 1/4 of Section 32 T74N, R23 W of the 5th P.M. This piece of land is only a part of the land the Heaberlins own. The immediate upstream owners from the Heaberlins are James C. King and Julia A. King, and the next upstream owners are Bill E. Shields and Shirley J. Shields. (testimony of Mr. Francis Heaberlin, Mr. Dave Allen; Department Exhibit 2a,2).

2. The piece of land in question is located on the flood plain of Otter Creek. Otter Creek has a drainage area of approximately

become the primary channel for this part of Otter Creek. The evidence of erosion cited by Mr. Riessen was the cut banks and a fair degree of meandering. Mr. Riessen testified this erosion can happen as quickly as one flood event or over several years, depending on many variables.

Department Exhibit 17 is an aerial photograph of the area taken in 1967. On this photograph, there appear to be trees at the downstream end of channel two, and some markings appear toward the upstream end of channel two. It is unclear whether these markings are the result of wet soil or some kind of small drainageway. There are also some trees in the general vicinity of channel three, although the treeline at the upstream end of channel three is quite a bit north of the downstream end of channel two.

(testimony of Mr. Riessen; Department Exhibit 17).

Department Exhibit 18 is an aerial photograph of the area taken in 1977. It appears in this photograph that the tree lines present in the 1967 photograph in the general vicinities of channels two and three have been eliminated. The scale of this photograph is reduced, which means that not as much detail can be seen. It is difficult to tell because of the scale and rescuion of the photograph, but there is some change in the darkness of the soil indicating there may be some surface drainage in the general areas of channels two and three. Also, simply the clearing of the trees could have caused the difference in color of the soil on the photograph. In Mr. Riessen's opinion, this photograph shows no evidence of a defined channel in the areas of channels two and three.

Appellant's Exhibit A is a copy of an aerial photograph taken in 1982. Mr. Riessen testified that Appellant's Exhibit A showed a darker band in the general area of channels two and three. Considering the quality and resolution of the copy of the photograph, Mr. Riessen could not tell for sure what the darker band was. He testified it could be some surface flow but did not appear to be a deep channel.

Mr. Riessen testified that he has been involved in a number of cases where small drainageways as depicted on soil survey maps were in error when compared with an actual field inspection. Therefore, he does not believe Appellant's Exhibit C sheet 81 has a high degree of reliability in showing that there were drainageways in the areas of channels two and three or whether they were crossable or not by farm equipment.

Department Exhibit 2a is a copy of a topographic map which was prepared from aerial photographs taken in 1978 and field checks done in 1980. The map was edited in 1983. Mr. Riessen testified topographic maps probably don't try to depict small drainageways, so it is not necessarily significant that the drainageways shown on the soil survey map do not exist on the topographic map. Assuming the soil survey map was accurate, the drainageway shown

"natural") excavation. The Department conceded it has such burden. (Department Reply Brief p.2).

There is good solid evidence, including expert testimony, which supports either the conclusion that channels two and three were excavated by humans or the conclusion that they were naturally caused by the action of running water. Therefore, the Department has failed to meet its burden of proof.

**DECISION AND ORDER**

It is therefore ORDERED that the Department's action in issuing Administrative Order No. 86-FP-04 is reversed.

Dated this 14<sup>th</sup> day of June, 1988.

  
Amy Christensen Couch  
Hearing Officer  
Department of Inspections and Appeals  
Lucas State Office Building  
Des Moines, Iowa 50319-0083

ACC/nlh

copy to: Randall Clark  
James Fowler

## MONTHLY VARIANCE REPORT

5/31/88

No. Facility	Program	Engineer	Subject	Decision	Date
1 IA Army Ammunition Plt	Air Quality		Explosives	denied	05/03/88
2 Appanese Co.	Flood Plain	Soil Conseration Sv	Storm/Storage Capacity	approved	05/11/88
3 Springdale Dr-Clin.Co.	Flood Plain	Brice,Petrides-Bon.	Storm/Storage Capacity	approved	05/11/88
4 Seneca F'ndry-Mob.City	Wastewater Oper.		Monitoring Frequency	denied	05/18/88
5 Corn Belt Sales-M'sltn	Underground Tanks		Monitoring Well #/Loc	approved	05/09/88
6 BLC Johnson Tire -DM	Underground Tanks		Closure	approved	05/11/88
7 Milford Man. Utilities	Watersupply Const.	Marv Thornton-ACCO	Design Basis	approved	05/02/88
8 Maple Crest HWP-M.City	Watersupply Oper.	BAJ Water Condit'ng	Water Monitoring	approved	05/19/88

**IOWA DEPARTMENT OF NATURAL RESOURCES**  
**Government Liaison Bureau**

**DATE:** June 1, 1988  
**TO:** Environmental Protection Commission  
**FROM:** Michael P. Murphy  
**SUBJECT:** Summary of Administrative Penalties

The following administrative penalties are due:

NAME/LOCATION	AMOUNT	DUE DATE
*Shelter Shield (Buffalo Center)	\$1,000	12-03-86
*Cedar Hills Apartments (Dubuque)	1,000	12-29-86
*City of Dysart	400	3-13-87
*JTM Indust./MacDade/Leamer (Pleasant Valley)	1,000	8-12-87
*Big Rock Tap	660	9-21-87
*Twelve Mile House (Bernard)	339	10-28-87
*OK Lounge (Marion)	448	11-01-87
*City of Sheldon	900	1-02-88
Richard Davis (Albia)	1,000	2-28-88
*Ellie's Bar and Grill (Grand River)	515	3-05-88
**Don Scribner (Nashua)	1,000	3-28-88
**Elings/Catron/Frey (Des Moines)	400	4-15-88
Camp Okoboji	230	4-22-88
White Consolidated Industries (Webster City)	500	4-30-88
**Pleasant Creek Estates (Shellsburg)	200	4-30-88
Lake Hendricks Park (Howard Co.)	50	5-09-88
Vernon Heights MHP (Cedar Rapids)	1,000	5-09-88
DeWitt Moose Lodge (DeWitt)	560	5-16-88
Fred Iben (Monticello)	100	5-20-88
63-180 Truckstop (Poweshiek Co.)	1,000	5-21-88
Linn Hollow MHP (Washington)	75	6-01-88
*Chico's Supper Club (Burr Oak)	954	6-10-88
**David Francy (New London)	400	6-10-88
**Lawrence Payne (Ottumwa)	525	6-15-88
Mike's Prairie Home (Ollie)	100	6-16-88
First Place Lanes (Audubon)	1,000	7-05-88
HWY #3 Mobile Home Park (Waverly)	200	7-05-88
Clear View Acres Store (Delhi)	230	7-11-88

\*Referred to the Attorney General  
 \*\*On Payment Schedule

Appellant Exhibit 1 - Report of Investigation dated August 21, 1985.

Department Exhibit 1 - Map of the City of Hudson, Iowa showing site 2.

Department Exhibit 2 - Letter from officer Paul Michael to Joseph Sanfilippo.

Department Exhibit 3 - Consent Order and Order.

#### FINDINGS OF FACT

1. Mr. Stan Moser is the owner of real estate located in the NW 1/4, SE 1/4 of section 27, T88N, R14W, Black Hawk County, Iowa. (testimony of Mr. Stan Moser; Administrative Order No. 87-SW-26).

2. On February 27, 1984, Mr. Stan Moser and the Iowa Department of Water, Air and Waste Management (now Iowa Department of Natural Resources) signed a Consent Order. The Consent Order followed an issuance of Administrative Order No. 83-LQ-10 by the Department on September 2, 1983. The Administrative Order alleged violations of statutes and rules regarding open burning and solid waste disposal. By signing the Consent Order, Mr. Moser did not admit the violations alleged in the Administrative Order, and agreed to comply with the following terms:

"a. No disposal of solid waste (as defined in Iowa Code Subsection 455B.301(4) and rule 900--100.2), except for solid waste generated by Stanley Moser, shall be caused, allowed or permitted on property owned or leased by Stanley Moser.

b. Any solid waste generated by Stanley Moser which is to be disposed on property owned or leased by Stanley Moser shall be disposed as required by rule 900--101.3.

c. No open burning of any solid waste, except for landscape waste originating on Stanley Moser's property, shall be caused, allowed or permitted on Stanley Moser's property.

d. Any solid waste presently on the property of Stanley Moser shall be permanently covered with earth or removed from the property."

(Department Exhibit 3; testimony of Mr. Stanley Moser).

3. On April 30, 1987 at approximately 8 p.m., Officer Paul R. Michael of the Hudson Police Department observed Mr. Stan Moser driving an endloader on his property at site number 2 on Department Exhibit 1. Mr. Moser was burying things. Prior to April 30, 1987, Officer Michael had recently observed trucks coming into the area of site number 2 and dumping material there. The trucks were carrying demolition material from houses being torn down. At another time, Officer Michael observed trucks carrying in tree limbs and branches and dumping them in the area. The demolition material Officer Michael observed on April 30th consisted of wood slats, plaster, and plasterboard. He observed parts of some fiberglass "portavet units" being

**BEFORE THE IOWA DEPARTMENT OF NATURAL RESOURCES**

**IN THE MATTER OF:**

**Eloise Reese**

) **PROPOSED FINDINGS OF FACT,**  
) **CONCLUSIONS OF LAW,**  
) **AND ORDER**  
) **NHS 870016**

On November 14, 1986, the Iowa Department of Natural Resources (Department) issued Flood Plain permit Number FP 86-181 to Eloise Reese c/o Farmers National Company, Omaha, Nebraska. The permit authorized the permittee to maintain, with the modifications stipulated, an existing agricultural levee and access ramp on the floodplains of the East Nishnabotna and West Nishnabotna Rivers at Sections 30 and 31, T68N, R41W and Sections 25 and 36, T68N, R42W, Fremont County. On December 10, 1986, Eloise Reese (Appellant) appealed from the conditions under which FP-86-181 was issued. A Notice of Hearing set the hearing for February 18, 1987. An oral motion for continuance and additional time to file the Petition was made by the appellant on January 14, 1987, which was granted. The hearing was continued until March 11, 1987.

The Petition was filed on February 6, 1987. The Department filed its Answer on February 25, 1987. On March 3, 1987 the Department filed a Request for Prehearing Conference and Disclosure. On March 4, 1987, Appellant filed a Motion to Continue. The Department filed a Resistance to the Motion to Continue on March 12, 1987. The Motion to Continue was granted on March 23, 1987, and the hearing was continued until May 6, 1987. A prehearing conference was set for April 22, 1987.

The prehearing conference was held by telephone conference call, and a summary of Pre-Hearing Conference was issued on April 24, 1987. The hearing scheduled for May 6, 1987 was continued indefinitely due to the hospitalization of appellant's attorney. By agreement of the parties, the hearing was set for November 17, 1987. The parties later agreed to continue the November 17, 1987 hearing until February 9, 1988 and they agreed to a briefing schedule for a jurisdictional issue.

Appellant filed her pre-hearing brief on December 10, 1987. Appellant also filed an Amendment to the Reese Petition and a Motion to Amend the Petition on December 10, 1987. On December 18, 1987 the Department filed a Resistance to Motion to Amend Petition. On December 23, 1987 an Order to allow amendment of the Petition was issued. On December 29, 1987 the Department filed its Answer to Petition Amendments. On January 8, 1988 the Department filed its Pre-Hearing Reply Brief. An Order was issued January 20, 1988.

On February 1, 1988 the Department filed a Motion for Production and Opportunity to cross examine, and the Appellant filed a



1. An agricultural levee system and access ramp consisting of 26,600 lineal feet of levee enclosing about 770 acres, currently exists on the land located on Sections 30 and 31, T68N, R41W and Sections 25 and 36, T68N, R42W, Fremont County. This land is situated on the common flood plain between the East and West Nishnabotna Rivers and is owned by Ms. Eloise Reese of Omaha, Nebraska. The East and West Nishnabotnas drain 1148 and 1649 square miles, respectively, at their mouths.  
(Record 1; Record 3)
2. Ms. Reese inherited the land from her father in 1961 or 1962. Her father had begun accumulating the land in the 1920's or early 30's until he owned all of the land south of county road J-46 and between the East and West Nishnabotna to their confluence, with the exception of land owned by the 22 Club. (See Department Exhibit 1) Farmers National Company has been the farm manager for the Reese property since February 20, 1962.  
(Testimony of Lloyd Heim; Department Exhibit 8)
3. There are many levees in the general area of the Reese property. The East and West Nishnabotna were straightened between 1900 and 1929 and the dredged material was placed on the banks of the river to form the levee. The landowners continued to strengthen and raise these levees and some are quite high. Some of the levees in the area are permitted by the Department and some are not. The Department has inadequate information about when many of the levees were raised and therefore has been unable to assert jurisdiction over them. In addition the Department has insufficient staff to keep track of all levees and usually gets involved by citizen complaint. The Reese levee, as it exists today, was built by trial and error over the last fifty years. No verifiable information is available to determine even approximately the pre-1957 height of the Reese levee.  
(Testimony of Jack D. Riessen; Lloyd Heim; Record 2)
4. The Twenty-Two (22) Club is a club consisting of twenty two members who use the club's 250 acres of land primarily for hunting and fishing. The 22 club land is farmed to pay the taxes and maintenance. The club has been in existence since the 1950's. The 22 club's property is surrounded by a low level levee. Club members reach their property using the access built by Eloise Reese (marked in red on Exhibit 1) and a forty foot wide right of way down the east bank of the West Nishnabotna River. When the Club's right of way is under water they have at times used the Reese levee top as a roadway to reach their property.  
(Testimony of Norman Kling; Dale Castle)
5. An access road is located east of the West Nishnabotna Bridge, and is designated on Department's Exhibit 1 in red. The function of the access road is to allow access from county road J-46 to the top of the Reese levee during high water. The area north of the East-West Reese levee is an equalization area for

c.f.s at the Hamburg gauge, if the flow was split evenly between the East and West Nishnabotna with 16, 000 c.f.s on each side, Wiitala calculated the following heights:

Point C - 931.2

Point D - 937.1

If the flows split differently with 20,000 cfs. from the East Nishnabotna then Wiitala's figures change slightly:

Point C. 931

Point D. 936.6

Wiitala cautioned that all hydraulic calculations are subject to error because there are too many variables. However, Wiitala considers the results reached through use of the HEC 2 computer program designed by the Army Corps of Engineers to be as good as present technology allows. Mr. Wiitala testified that although his results differed from Mr. Riessen's, he had no problem with Riessen's analysis and results. Riessen's calculations for points C and D as found in the permit are based on his analysis of confined floods, unconfined floods, and floods where only the Reese levee is effective.

(Testimony of Sulo Wiitala; Reese Exhibit B; Record 1)

19. In reviewing the Reese levee, Mr. Riessen used flow records from the USGS gauging stations at Hamburg (Nishnabotna), Atlantic and Red Oak (East Nish), and Randolph and Hancock (West Nish). The drainage areas at the mouths of the East Nishnabotna and West Nishnabotna are 1148 square miles and 1649 square miles, respectively. Riessen calculated the flow values for the main stem below the confluence and for the mouths of the East and West Nish using a graphical regionalization technique. His results were:

<u>Recurrence Interval</u>	<u>Mainstem</u>	<u>Peak Discharges (c.f.s.)</u>	
		<u>East N.</u>	<u>West N.</u>
10 (years)	32,000	25,500	30,000
25	37,000	32,000	35,000
50	40,000	35,000	38,200
100	42,000	38,500	41,000

Peak flow values for the mainstem are only slightly above those for the East and West despite having a considerably larger drainage area.

(Testimony of Riessen; Record 2)

20. The graphical regionalization technique used by Riessen in arriving at the above results involves two basic steps. First, flow frequency curves were derived for each of these stations using methodology as presented in the Water Resources Council Bulletin #17B of the Hydrology Committee, "Guidelines for Determining Flood Flow Frequency." The derived station estimates were extrapolated to the mouths of the East and West Nishnabotna by graphically fitting a curve to the plotted data of  $\log 10Q(\text{discharge})$  vs.  $\log 10DA$  (drainage area).

(Record 2)

overtopping will occur due to discharges from Q10 to Q25 with the more comprehensive levee system being permitted the greater degree of protection.

b. Additional protection. Where it can clearly be shown that loss of valley storage caused by construction of the levee will not increase peak flood stages and discharges, the level of protection provided by the agricultural levee or dike may be increased beyond the Q10 to Q25 range.

d. Maximum effect. The maximum increase in the flood profile resulting from the construction, operation, and maintenance of an agricultural levee or dike shall be used in determining the maximum increase in flood profile resulting from such levees or dikes.

7. 900 Iowa Administrative Code 72.31(1) provided:  
"72.31(1) In general. Where evidence is presented that additional private or significant public damage will not result from flood plain or floodway construction (other than channel changes) subject to regulation under Chapters 70 to 72 of these rules, the department may permit variance to the criteria stated in Chapter 72."

8. Appellant has argued that the Department's action is barred by Iowa Code Section 614.1(4), the statute of limitations, and has moved to amend her Petition to insert Division IIA, as an amendment to conform to proof. The amendment is granted. Appellant's argument, however, is rejected. The amendment is granted. Appellant's argument, however, is rejected. The general statute of limitations is inapplicable to the Department when it is carrying out the policy of the state pertaining to flood control. State ex rel. Weede v. Iowa Southern Utilities Co. of Delaware, 2NW. 2d 372,400 (Iowa 1942)

9. The appellant has argued that the construction activity of the U.S. Army Corps of Engineers, on the Reese levee after a flood in 1972, pursuant to Public Law 84-99, pre-empts Iowa's authority to assert jurisdiction over the levee. Public Law 84-99 specifically states that modification of works to increase the degree of protection, or to provide protection to a larger area, is beyond the scope of PL 84-99. Public Law 84-99, 5-2(a)(2) (See Reese Exhibit U). The U.S. Army Corps of Engineers is restricted to repair and restoration of flood control projects. Between January and June 1972, four points on the Reese levee were raised. The raises varied in height from 1.5 feet to 2.6 feet. These raises could not have been accomplished under the authority of Public Law 84-99. Therefore, the Department is not precluded from exercising jurisdiction over the Reese levee based on the 1972 modifications to levee height. Moreover, the modifications and raises to the levee in 1964 and 1970 are sufficient to provide the Department jurisdiction over the levee.

10. The parties disagree as to the allocation of the burden of proof. In Gender Life Company v. Liddy, 207 NW 2d 27,31 (Iowa 1973) the Iowa Supreme court stated, "Trial court found, and we agree, that in administrative proceedings, as well as in court

IOWA DEPARTMENT OF NATURAL RESOURCES

RECEIVED

IN THE MATTER OF:

Eloise M. Reese, et al,  
Appellant.

Docket No.: 870016

D.I.A.  
APPEALS AND  
FAIR HEARINGS

APPLICATION FOR REHEARING

COMES NOW Eloise M. Reese and hereby applies for rehearing in this matter on the following issues and grounds:

1. Finding of Fact 20 in that it is believed the Hearing Officer is referring to Reese Exhibits B, C and D, as there are no flood profiles entered in evidence by the Department.

2. Finding of Fact 25. The Department has called the ditch on the downstream side of County Road J46 an equalization area, but has not considered the fact that the floodway flows of both the East and West Wishnabotna Rivers are confined by the bridges of County Road J46 over those rivers and that this so-called equalization area is downstream of the bridges, not upstream where equalization might be of some benefit other than as a storage area. As the rivers' principal flows are through the bridge openings and the field entrance lies across the J46 ditch on the downstream side of the road, there is no showing of the necessity for flow equalization beyond the bald statement by Riessen, without explanation, that additional tubes are insufficient. The only levees endangered, if any are, by this field access are Reese levees, and as the field access affects no other party, being on the downstream side of County Road J46, there is no adequate equitable reason to require its degradation.

3. Finding of Fact 26. This finding states "Based on the hydraulic analysis, any levee on the Reese property as well as the upstream same

b. Application paragraph 2: Appellant already extensively argued this same point in her Brief and Argument, at pages 13-14, before the proposed decision was rendered.

c. Application paragraph 3: As indicated in Finding of Fact 27 of the Proposed Decision, the Department essentially granted a variance in allowing the Reese levee system to remain despite violations of the Department's levee criteria. Indeed, Mr. Riessen also recognized in Record 2 (top, page 11) that, "Virtually none of the existing levees in the general area would meet the maximum effect criterion of 900-72.4(1)"d" IAC." Further, Mr. Riessen also acknowledged that, upon application to the Department, adjacent levees could be raised to the same level as the elevation required for the Reese levee system. Therefore, any levee raise which may be authorized for the game management area would be consistent with and even anticipated by the hydraulic analyses already performed by Mr. Riessen.

d. Application paragraph 4: Appellant already argued this point in her Brief and Argument (pp. 11-13) and in her Reply Brief and Argument (pp. 4, bottom - 5), before the proposed decision was rendered.

e. Application paragraph 5: The questioned Conclusion of Law references Finding of Fact 26. This finding, essentially a quotation from Record 2, pages 10-11, includes the term

he told Mr. Gradert that he could burn, but he would need get a permit to do so from the Department of Natural Resources. Krull testified that he told Gradert he would get the permit for him and that Gradert should tell him when he was ready to burn and the department would set a date and an alternate date. Krull also told Gradert that he would go look at the site so he could give a description when he placed an order for the permit.

Mr. Herman Gradert testified that Krull told him he could not burn because there was a ban on open burning due to extremely dry weather. Gradert said he told Krull he was ready to burn but he would wait until the weather conditions were right. Gradert testified they discussed that the closest building was a quarter of a mile away. Gradert stated that Krull told him he would look at the site and get back to him if it wasn't all right.

Gradert also testified that in 1981 he called the Sibley Fire Chief (not Krull), and asked if it would be all right if he burned a barn and some brush. The chief inquired about the nearest buildings and told Gradert to call him the day he was going to burn it. Gradert called him that morning and the chief said "OK, we know about it." The open burning laws have not changed since 1981. The former chief followed improper procedure, but Mr Gradert did not know it.

The hearing officer believes that Mr. Krull did tell Mr. Gradert that a permit was necessary in order to burn the farmhouse. The hearing officer is not convinced that Mr. Gradert understood this. It appears Mr Gradert was confused concerning the proper procedure to follow.  
(Testimony of Ted Krull, Herman Gradert; Department Exhibits 1 and 2)

3. On May 13, 1987 at approximately 7:00 a.m. Mr. Herman Gradert called Mr. Krull and told him they were going to burn the house. His sons had already left to set the fire. Krull told him they could not burn without a permit and told Gradert to call Jeff McCullough at the Spencer DNR office to confirm it. Gradert promised to call McCullough, but decided to try to stop the fire instead. The house to be burned was one mile from Herman Gradert's house. When Gradert arrived the house was already burning. The fire had been set by his sons, Ernest and Kevin Gradert.  
(Testimony of Ted Krull, Herman Gradert)
4. The house that burned was a dilapidated one and one half story farmhouse. The nearest building was a quarter mile away.  
(Testimony of Ted Krull, Herman Gradert)
5. There was a formal county wide ban on open burning from April 14 to April 28, 1987. Prior to that, Chief Krull had

6. The evidence established that Ernest and Kevin Gradert allowed, caused, and permitted open burning of combustible materials on their farm northwest of Sibley, Iowa, in Viola Township, Section 28, Northwest Quarter, in violation of 567 Iowa Administrative Code 23.2(1). The burning of the farmhouse did not qualify for an exemption from the prohibition under 567 Iowa Administrative Code 23.2(3), nor did the appellants obtain a variance, pursuant to 567 Iowa Administrative Code 23.2(2). Therefore, the appellants, Ernest and Kevin Gradert, are found to have violated 567 I.A.C. 23.2(1).
7. The evidence established that the assessment of a \$150.00 administrative penalty for gravity of the violation was reasonable due to the actual or threatened harm to the environment or the public health and safety. 567 Iowa Administrative Code 10.2(2)(a).
8. The evidence failed to establish that this was a knowing violation or disregard for the requirements of the Department. Mr. Gradert did not understand that he needed to call the fire chief well before the fire was set to get approval. He was never told that the fire department would burn the house down as a training fire. In his previous experience with open burning in 1981, Mr. Gradert was erroneously informed by the former Sibley fire chief that he need only call the fire department on the day he set the fire. Under these circumstances, the evidence does not support the conclusion that the violation was knowing or with disregard for the requirements of the Department. Therefore, the assessment of a \$100.00 penalty for culpability was unreasonable and must be reversed.
9. The appellants were ordered to pay a penalty of \$200.00 for economic benefit, which represents the savings associated with the burning of the material instead of disposing of it in a sanitary landfill. The preponderance of the evidence established that if proper procedures had been followed, the Gradert home would have been used as a training fire for a volunteer fire department. There was no allegation that a training fire would have involved any cost to the appellants. Therefore, no economic benefit was proven, and the assessment of \$200.00 for this factor must be reversed.
10. Fifty dollars was assessed for aggravating factors: The lack of regard for the Department's requirements and the potential harm to the public health. This is duplicative of the rationales for the gravity of the violation and culpability assessment.

The additional penalty of \$50.00 is reversed.

194 square miles at the south edge of the Heaberlin property.  
(testimony of Mr. Allen)

3. On November 25, 1986, the Department issued Administrative Order No. 86-PP-4 to Francis and Velma Heaberlin. In the Order, the Department described "two channel-like excavations" connected with Otter Creek, and stated that the "excavations" carried stream flow only during periods of high water. The Order further stated Mr. Allen's conclusion "that the excavations were pilot channels that would eventually erode to larger capacity and thereby effect a channel change on Otter Creek." The Department ordered the Heaberlins to construct soil plugs in the two "excavations" so as to block the two pilot channels.

The Heaberlins appealed this Administrative Order.

4. The Heaberlins have owned the land at issue in this case since 1957. The Heaberlins have rented out the land for a number of years. Mr. Robert Hart farmed the land owned by the Heaberlins for approximately eight years ending in 1984. At the same time, Mr. Hart farmed the adjacent land for the Kings. Mr. Hart farmed thirteen years for the Kings. Mr. Kevin Ball has farmed the Heaberlin land since 1985. (testimony of Mr. Hart; Mr. Ball; Mr. Francis Heaberlin).

5. Mr. Robert Hart farmed the part of Mr. Heaberlin's land along the bank south of Otter Creek next to channel two for at least six to eight years up to 1984. He testified he farmed King land for thirteen years. In approximately 1978, although Mr. Hart was not sure of the date, Mr. Hart took out fencelines between Mr. Heaberlin's and Mr. King's property. He removed trees and brush from the fencerow. He also testified he scraped off some light brush in the area of channel two and leveled it for farming but did no digging or excavation of the creek bed. He testified the area flooded often, water overtopped the banks of Otter Creek, and every year channel two got a little deeper and a little bigger. The last year he farmed the area, there was only one place along channel two that he could cross with farm equipment. For the thirteen years he was in the area, Mr. Hart never saw heavy equipment digging in the area of channels two and three although he was rarely in the area of channel three. (testimony of Mr. Hart).

6. Otter Creek floods often on the Heaberlin property and on land upstream of the Heaberlin land. (testimony of Mr. Hart, Mr. Ball, Mr. Heaberlin).

7. Construction of channel changes by straightening the channel by upstream landowners can increase flooding downstream. Because there is less meandering after straightening, the velocity of the water will increase downstream. (testimony of Jack Riessen; Harry Alender).



on the soil survey map generally in the area of channels two and three was characterized as a relatively shallow ditch by Mr. Riessen. Mr. Riessen testified it could have been very shallow with almost no relief at all. It would not have been a deeply incised channel. Mr. Riessen testified that it is conceivable that under certain circumstances, given the drainageways shown on the soil survey map, channels two and three could have occurred naturally. However, he did not change his opinion that the channels were excavated because he could not believe that the channels as they exist today could have developed naturally from the shallow drainageways which carried some localized drainage that appear to have been in the area for many years. Mr. Riessen believes that someone did some excavation which essentially caused Otter Creek to change course at that point.

Based on Mr. Allen's observations, the photographs of the site, topographic maps of the area and the alignment of channels two and three and pilot channels on the Shields and King properties, Mr. Riessen came to the conclusion that channels two and three were originally excavated by some person, and then had been eroded by water to the extent that they had some appearance of naturally occurring channels by 1985. (Testimony of Mr. Allen; Mr. Riessen; Department Exhibits 1, 2, 2a, 3, 4a-4f, 16, 16a-16e, 17, 18, Appellant's Exhibits A, C).

B. Mr. Heaberlin's position is that the channel changes on his property occurred naturally and he had done nothing to cause them and had not permitted anyone else to do so. Mr. Heaberlin has consistently held this position. (Department Exhibit 6, 8, 11, 12). On May 23, 1986, Mr. Allen had "no hard evidence that the three pilot channels were man made (induced) and not natural as contended by Schneider (King) and Heaberlin." (Department Exhibit 12). On June 10, 1986, the department sent a letter to Mr. Heaberlin ordering him to restore the area. Mr. Allen testified that between May 23 and June 10, 1986, he had not been back out to the property, had not talked with anyone who had personal knowledge of the situation, and had done no tests of the area. What he had done was review the evidence he already had gathered with Mr. Riessen and other departmental flood plain engineers.

Mr. Heaberlin presented the expert testimony of Mr. Harry Alender in support of his position. Mr. Alender had hydrology courses in college but has had no specialized hydrology training since then. The work that he does does not involve analyzing flood flows. He works with and coordinates the activities of several employees who are trained in the geotechnical area, which is an extension of civil engineering. They work with water flow in project site development.

Mr. Alender is an engineer who inspected the area at issue in this case twice: first in February 1986 and again just prior to the hearing in January 1988. He testified he was amazed at the changes that had occurred between the two inspections. Channel

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ENVIRONMENTAL PROTECTION COMMISSION**

**ITEM** 11

**DECISION**

**REFERRALS TO THE ATTORNEY GENERAL**

The Director requests the referral of the following to the Attorney General for appropriate legal action. Litigation reports have been provided to the Commissioners and are confidential pursuant to Iowa Code section 22.7(4).

Keokuk Landfill, Inc. - solid waste  
City of Glidden - wastewater  
City of Ricketts - wastewater  
Ottumwa-Wapello County Sanitary Landfill Commission - solid waste  
Camp Okoboji (Milford) - water supply/penalty  
DeWitt Moose Lodge - water supply/penalty  
Richard and Sonja Davis (Albia) - solid waste  
Vernon Heights Mobile Home Court (Cedar Rapids) - water supply/penalty

Mike Murphy  
June 2, 1988

88154DNR0019

# REPORTS OF HAZARDOUS CONDITIONS

During the period of May 1, 1988 through May 31, 1988, reports of 99 hazardous conditions were forwarded to the Central Office. Two incidents are highlighted, followed by a general summary and the number per field office.

Date Reported and County	Description: Material, Amount, Date of Incident, Cause, Location, Impact	Responsible Party	Response and Corrective Actions
5/06/88 WORTH	On May 6, 1988, a spill of 3,000 gallons of 28% nitrogen fertilizer and 150 gallons of Lasso occurred at the intersection of Highway 9 and County Road 834 near Manly, Iowa. The spill resulted when a truck overturned while trying to round a corner. All material spilled into a ditch.	Farmers Coop of Manly Manly, Iowa	The truck was righted and removed from the scene and free liquid was recovered from the ditch. Contaminated soil was removed for application on land.
5/12/88 HUBBARD	Two engines and 14 cars of a train derailed near Durant, Iowa on May 12, 1988, and about 20,000 gallons of 38% nitrogen fertilizer spilled from two tank cars into Mud and Sugar Creeks and killed several thousand fish.	Iowa Interstate Railroad Iowa City, Iowa	Due to a six-foot-long gash in one tanker and a one-inch rainfall at the time of the event, most of the material entered the streams soon after the derailment. Downstream water users were notified of the incident, and the creeks were monitored for high levels of ammonia and effects on aquatic organisms. The remaining fertilizer in one tank car was pumped out and the cars were rerailed. Contaminated soil near the stream was removed.

NAME/LOCATION	AMOUNT	DUE DATE
The Hayloft Tavern (Grant)	960	7-12-88
Dumont Auto Parts (Dumont)	600	7-20-88
City of Malcom	500	7-20-88
Bill Keough (Pertile)	700	7-21-88
Winnebago Industries, Inc. (Forest City)	1,000	7-26-88
Ripsey Municipal Water Supply	230	-----
Wiltgen Construction Co. (Calmar)	1,000	7-27-88
Ernest Nelson (Rowan)	500	-----
Superior-Ideal, Inc. (Oskaloosa)	1,000	-----
Jesco's Steakhouse Lounge (Castana)	600	-----

The following administrative penalties have been appealed:

NAME/LOCATION	AMOUNT
Handi-Klasp, Inc. (Webster City)	1,000
Iowa City Registry MHP	1,000
Thomas E. Lennon (Barnum)	700
Great Rivers Coop (Atavia)	1,000
City of Wapello	500
Wilfred McPee (Union Co.)	500
1st Iowa State Bank (Albia)	1,000
Gradert, Ernest and Kevin (Sibley)	500
Stan Moser (Hudson)	250
City of University Park	500
Cloyd Poland (Decatur)	800
Lynn Mennenga Feedlot (Wright Co.)	600
Motel Grinnell	1,000
Land O' Lakes, Inc. (Ellsworth)	1,000
Harry Brocka (Dumont)	800
Conoco Gas and West Branch Inn (West Branch)	1,000
Marv's Lakeside Tap (Davenport)	200
City of Hospers	300
City of Marcus	1,000
Milo Chalfant, et.al. (Webster City)	1,000
City of Neola	1,000

\*Referred to the Attorney General

\*\*On Payment Schedule

The following administrative penalties were paid in May:

NAME/LOCATION	AMOUNT
Country Corner Cafe (Pacific Junction)	451
**David Francy (New London)	400
Breitbart's Supper Club (Sherrill)	50
Beaver Hills Country Club (Cedar Falls)	75
Hills School (Iowa City)	50
Donald M. Caraway (Marion)	500
Braddyville, City of	100
**Lawrence Payne (Ottumwa)	105
City of Orchard	100
City of Boxholm	75
South Central Iowa Landfill Agency	800
City of Lynnville	225

TOTAL \$2,931

The \$600.00 penalty assessed to Bianchi-Meyrat Lagoon of Des Moines was rescinded.

- \* Referred to the Attorney General
- \*\* On Payment Schedule

MPM:mjg

DEPARTMENT OF NATURAL RESOURCES  
 ENVIRONMENTAL PROTECTION COMMISSION  
 ATTORNEY GENERAL REFERRALS  
 JUNE 1, 1988

Name, Location and Region Number	New or Updated	Program	Alleged Violation	ENE Action	Status	Date
Yocum, Mar Johnson (6)		Flood Plain	Prohibited Construction	Defending Referred to Attorney General	Suit Filed Motion to Dismiss Denied Referred to County Court Files Trial Held Judgment for Department Appealed to Supreme Court	12/18/84 3/06/85 8/07/85 7/22/85 10/85 6/16/87 8/18/87 9/01/88

2. Alternative Waste Management Techniques - Section 201(g)(2) requires that alternative technologies be considered in project design (40 CFR 5.2030: Facilities Planning).

Comment: Again a well understood concept of grant project planning is best accommodated by a federal regulation reference. In the grant program alternative technologies had a grant bonus incentive. They still must be considered and can be funded by SRF loans.

3. Infiltration/Inflow - Section 201(g)(3) requires the applicant to show that the related sewer collection system is not subject to excessive infiltration (40 CFR 35.2030(b)(4): Facilities Planning, 40 CFR 35.2120: Infiltration/Inflow).

Comment: Infiltration/Inflow studies became a significant effort in the grant program and are a well recognized requirement that could best be assimilated by a reference to the federal regulation.

4. Innovative/Alternative Technology - Section 201(g)(5) requires that applicants study innovative and alternative treatment technologies and take into account opportunities to construct revenue producing facilities and to make more efficient uses of energy and resources (40 CFR 35.2030: Facilities Planning).

Comment: Another routine requirement of grant project planning that has not caused an unusual concern. However, it is not always a part of serious planning outside the grant program. It can likely be met by most projects with consideration "as appropriate" to the circumstance. Since the grant regulation cited doesn't say much more than the above statement, the statement in the state rule may be adequate.

projects with enforceable requirements have been met. This can easily be handled by a reference to the federal regulations and/or the state rule for the grant program (567 - 91.6(2)).

14. Combined Sewer Overflows - Section 201(n)(1) provides that funds under Section 205 may be used for water quality problems due to discharges of combined sewer overflows which are not otherwise eligible, if such discharges are a major priority in a state (40 CFR 35.2015(b)(2)(iv): State Priority Systems - categories of need and 35.2024(a): Combined Sewer Overflows).

Comment: This is a category covered in the same section of the federal regulations cited in Requirement #13. Combined sewer overflow projects have not been funded under the grant program as such discharges have not been identified as a major priority due to the lack of significant water quality impacts. The category could be referenced for case-by-case consideration by maintaining the regulation reference cited in Requirement #13 or referenced to the current state grant rule as mentioned above. It could be eliminated by deleting a reference to paragraph iv. of 40 CFR 35.2015(b)(2). In any event, this qualifier has minimal significance in Iowa.

15. Governor's Discretionary Fund - Section 211 provides that major rehabilitation or replacement of collectors is not eligible under the Governor's 20 percent discretionary author / of 201(g)(1) unless the collector is needed to assure the total integrity of the treatment works, or that, for a new collector, adequate capacity exists at the facilities (40 CFR 35.2116 Collection System).

Comment: The types of projects referenced here are sewer rehabilitation other than cost-effective based and construction of new collection systems. Current state grant rules address these two types. Major rehab is not considered for grants while new collection systems are, to



- VII. General Administrative Requirements
  - A. Loan agreement conditions
  - B. Allowable/unallowable costs
  - C. Records requirements
    - 1. Accounting standards
    - 2. Audit/inspection
  - E. Crosscutting federal laws
  - F. Construction payment schedules
  - G. Termination
- VIII. Loan payment requirements
  - A. Interim payments
  - B. Final loan adjustment
- IX. Project Requirements
  - A. Planning
    - 1. BPWTT - CFR reference
    - 2. Alternative technology - CFR reference
    - 3. Infiltration/inflow - CFR reference
    - 4. Innovative and alternative technology/energy reduction
    - 5. Recreation and open space opportunity
    - 6. State and areawide management plans
    - 7. Environmental review procedure
  - B. Project design and construction
    - 1. Value engineering
    - 2. User Charge System
    - 3. Davis-Bacon Labor Wage Rates
    - 4. Project performance certification
    - 5. MBE/WBE
    - 6. Site
    - 7. Project changes
    - 8. State inspection
  - C. Qualifying Requirements
    - 1. Fundable categories
      - a. Treatment
      - b. Sewers
      - c. Combined sewers
    - 2. Capital financing plans
  - D. Other
    - 1. Cost information
    - 2. NPDES/compliance
- X. Final Loan Agreement and Repayment Policy
  - A. Loan policy
  - B. Terms
    - 1. Purpose for payments
    - 2. Cost
    - 3. Interest

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 15

DECISION

FINE PARTICULATE (PM10) AIR QUALITY STATE IMPLEMENTATION PLAN (SIP)

EPA promulgated new air quality standards for particulate matter on July 1, 1987. As a result the state must prepare and submit a new State Implementation Plan (SIP).

Last month you reviewed the attached draft rules and a draft "Committal SIP" designed to meet this requirement with the least possible disruption of the existing program. EPA's Region VII staff have reviewed the draft rules and "Committal SIP". Their suggestions have been incorporated into these documents. Upon completion of the rulemaking cycle the Department will submit the adopted rules and committal SIP to EPA.

The Commission is asked to approve these documents for Public Hearing.

Allan Stokes

2. taking compliance action if permittees refuse to stop pumping after being notified.

In recent years notification has been done in one or two ways. If the number of stream segments nearing or below the protected flow is small, we have telephoned the affected permittees and told them of flow conditions and pumping restrictions. If the number of stream segments nearing or below the protected flow is expected to be large, we have sent the affected permittees a standardized letter (sample attached) stating that they must telephone a prerecorded message each week to determine which streams are below the protected flow. In either case we use weekly, or occasionally more frequent, updates of streamflow conditions from USGS and the Corps of Engineers to determine which stream segments are impacted. If possible, permittees are provided notification in advance of the times that streams reach protected flows. This helps to lessen the shock of being told to stop pumping and also may allow an irrigator, for example, a chance to make another round with his equipment before the stream gets to the protected flow.

Compliance actions have been initiated on a complaint basis in past. As flows get low and pumping from streams is observed, inquiries and complaints are received from state and county conservation officers, members of the general public, irrigators who are complying with a notification to cease pumping, etc. Upon receiving a complaint or inquiry and verifying that the stream segment is below the protected flow, the following steps is taken.

1. Telephone and tell the permittee to stop pumping.
2. Send or deliver to the permittee a certified letter containing the same information as previously provided in the initial notification by telephone or standardized letter and stating the possible penalties for violation.
3. Telephone and tell the complainant the actions that have been taken and ask the complainant to notify the Department if pumping continues.
4. If violation continues, certain facts must be verified at a minimum. The most important of these are that the stream was below the protected flow; the permittee had been ordered to stop pumping; after being so ordered, the permittee continued to pump; and the amount pumped exceed 25,000 gallons per day.

Any enforcement action taken as a result of a compliance action would be in accordance with normal referral procedure to the DNR Legal Section. In the past compliance actions have been relatively few in number and enforcement actions have been extremely rare.

#### 1988 Program Implementation.

1. For this year the notification procedures will be handled by the central office for the following reasons:
  - a. The field offices do not have copies of water use permits issued prior to July 1, 1983. The permits contain information not available on our computer records about which source or sources of

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DEPARTMENT OF NATURAL RESOURCES  
ENVIRONMENTAL PROTECTION COMMISSION  
ATTORNEY GENERAL REFERRALS

JUNE 1, 1988

Name, Location and Region Number	Rev or Updated	Program	Alleged Violation	DNR Action	Status	Date
Alcon Corporation Connecticut 4		Hazardous Waste	Release of Hazardous Substances	Referred to Attorney General	Referred	12/16/82 EPA suit filed 2/26/87 State intervention 3/05/87 Motion to dismiss granted/denied 2/26/88 Filed interlocutory appeal 3/11/88
ASPRC, Inc. Waterloo 1		Air Quality	Excess Emissions	Order	Referred	2/16/88
Big Rock Tap Big Rock 6		Drinking Water	Monitoring	Order/Penalty	Referred Suit Filed	11/17/87 1/25/88
Bozarth and Bell, Inc. Davenport 6		Solid Waste	Open Dumping	Order	Referred Suit Filed Default Judgment \$7500 Motion to set aside overruled Funds condemned (\$2,628)	2/20/87 4/23/87 6/22/87 10/30/87 3/18/88
Bryant, Robert E. Cherokee 3		Wastewater	Prohibited Discharge	Order	Referred Suit Filed Bankruptcy Proceedings Discovery Proceeding	6/01/86 9/08/86
Calaway, Don 1		Flood Plain	Unpermitted levee	Order	Referred	5/17/88
Cedar Hills Apco Dubuque 11		Water Supply	Monitoring; Operating without permit	Order/Penalty	Referred Suit Filed Motion for Sum. Judgment Denied	2/20/87 4/27/87 12/30/87
Chicago Northwestern 28	Updated	Air Quality	Open burning	Referred to Attorney General	Referred Consent Decree (\$10,000)	10/20/87 5/12/88
Cooper, Kenneth Dubuque 5		Storage Tank	Spill Cleanup	Order	Referred	10/27/87

DEPARTMENT OF NATURAL RESOURCES  
ENVIRONMENTAL PROTECTION COMMISSION  
CONTESTED CASES  
JUNE, 1988

DATE RECEIVED	NAME OF CASE	ACTION APPEALED	PROGRAM	ASSIGNED TO	STATUS
10-17-85	City of Devington	Administrative Order	MM	Nansen	Settlement offered to city 5-25-88.
1-23-86	Delaware Soil Service	Administrative Order	MM	Landa	Hearing continued; cleanup study progressing.
6-12-86	ADM - Clinton	Administrative Order	Air	Landa	Hearing continued.
10-27-86	Mandi-Klamp Company, Inc.	Administrative Order	AQ/MM/SM	Landa	Hearing officer's decision affirmed in part.
12-03-86	City of Nantux	Administrative Order	MS	Nansen	Hearing continued; settlement close.
12-11-86	Eloise Reese	Permit Condition	FP	Clark	Permit decision affirmed.
12-24-86	Francis Neuberlin	Administrative Order	FP	Clark	Briefing completed - awaiting decision.
5-12-87	Iowa City Regency HRP	Administrative Order	MM	Nansen	Hearing held 11-03-87.
6-08-87	Willow Creek Dam/Zachle et al	Permit Issuance	FP	Clark	Negotiating before filing.
6-11-87	Thomas Larson	Administrative Order	FP	Clark	Order upheld - appealed to EPC.
8-10-87	Great Rivers Co-op	Administrative Order	MC	Landa	Clean-up proceeding.
8-17-87	City of Mapallo	Administrative Order	MM	Nansen	EMR met with City. 6/88 EPC
9-17-87	Grubert, Kevin and Ernest	Admin. rative Order	AQ	Landa	Hearing held 5-27-88. Decision pending.
10-22-87	University Park	Administrative Order	MM	Nansen	Hearing continued. Settlement close.
12-07-87	Stas Hooper	Administrative Order	SM	Murphy	Proposed decision 4-12-88; appealed.
12-11-87	Violar Landfill	Permit Revocation	SM	Kennedy	Settlement negotiations.
12-15-87	Delaware Co. Conc. Cit. (DBP)	Permit Issuance	MR	Clark	Appears it will be dismissed.
12-31-87	City of Tipton	Administrative Order	MM	Nansen	Received information.
12-31-87	Wilfred McFee	Administrative Order	MM	Murphy	Negotiating before filing.
1-15-88	First Iowa State Bank	Administrative Order	SM	Kennedy	Continued. Settlement pending.
1-22-88	IDP, Fort Dodge	NPDES Permit	MM	Nansen	Negotiating before filing.
2-04-88	Beaverdale Heights, Woodman; Heartwood Hills	Administrative Order	SM	Landa	Plans approved. Continued pending resolution.

5. Recreation and Open Space Opportunities - Section 201(g)(6) requires that the applicant analyze the potential recreation and open space opportunities in the planning of the proposed facilities (40 CFR 35.2030(b)(5): Facilities Planning).

Comment: This is not a major effort as experienced in the grant program and would be expected of projects as alternatives would allow. Again, the statement in state rule as the requirement should suffice.

6. and 7. Water Quality Management Planning - Section 204(a)(1) and (2) (Two statutory references) requires that treatment works projects be included in plans developed under Sections 208 and 303(e) (40 CFR 35.2102: Water Quality Management Plans).

Comment: This is a simple and non-issue requirement that projects be in conformance with any state or area wide planning. The statement above should be adequate.

8. Environment Review - Section 511(c)(1) applies the Environmental Impact Statement requirement of the National Environmental Policy Act to projects receiving Title II grants (40 CFR 35.2113: Environmental Review).

Comment: This is an environmental review process which is routine in the grant program where specific procedures are in place by our delegation agreement with EPA. As the NEPA requirements were not totally delegable, EPA is still involved in the process. For SRF funded projects, the state must develop its own environmental review process assuring all projects receive a NEPA-like review. The purpose is to address potential undesirable side effects resulting from inappropriate design location or promotion of uncontrolled development. It is expected that current grant procedures can be modified so the state will assume responsibility for

allow unsewered cities financial assistance if needed. The same principle can be sustained for loan projects by referencing or restating the state rule cited in Reference #13 above.

16. Capital Financing Plans - Section 201(o) calls on the administrator ("state" under a capitalization grant) to encourage and assist communities in the development of capital financing plans.

Comment: This is an activity which occurs during the planning process and is of interest to city, state and federal agencies whether grant funds or loans are used. The state has worked closely with grantees on financing plans and will be of more serious interest in the loan repayment context. Because it is such a basic and integral part of a loan program such a general statement in a state rule is of questionable significance.

#### SUMMARY

The basic concept of specifying these requirement in state rules is to do so as explicitly and simply as possible. Their familiarity in the grant program should provide an easy transition. Rules will be worded very basically to simply comply with the statutory reference. In summary, however, project facility planning for SRF funded projects will not be noticeably different than that done for grant projects.



4. Repayment period
  5. Security
  6. Requirements for disbursements/documentation
  7. Applicable laws
  8. Delinquency provisions
- C. Financial Requirements
1. Dedicated repayment source
  2. Project accounts
  3. Annual audit
  4. Requirement to increase revenues if necessary
  5. Double benefits

ENVIRONMENTAL PROTECTION COMMISSION [367]  
Notice of Intended Action

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission proposes to adopt amendments to its rules pertaining to the prevention, abatement and control of air pollution. Specifically, the Commission proposes to amend Chapter 20, "Scope of Title- Definitions- Forms- Rules of Practice;" Chapter 22, "Controlling Pollution;" Chapter 26, "Prevention of Air Pollution Emergency Episodes;" and Chapter 28, "Ambient Air Quality Standards." These amendments relate to the regulation of particulate matter which is less than an equal to ten micrometers in diameter or  $PM_{10}$ .

In 1971, EPA promulgated primary and secondary national ambient air quality standards for particulate matter, measured as "total suspended particulate matter" or "TSP." The primary standards were set at  $260 \mu g/m^3$ , 24-hour average not to be exceeded more than once per year, and  $75 \mu g/m^3$ , annual geometric mean. The secondary standard, also measured as TSP, was set at  $150 \mu g/m^3$ , 24-hour average not to be exceeded more than once per year. The Department has adopted these standards and has implemented its air program in accordance with these standards.

The EPA has, pursuant to sections 108 and 109 of the Clean Air Act, reviewed and revised the health and welfare criteria upon which the primary and secondary particulate matter standards are based. On July 1, 1987, (52 Fed. Reg. 24634), EPA promulgated changes in the particulate standards which include: (1) replacing TSP as the indicator for particulate matter for the ambient standards with a new indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers ( $PM_{10}$ ); (2) replacing the 24-hour primary TSP standard with a 24-hour  $PM_{10}$  standard of  $150 \mu g/m^3$  with no more than one expected exceedance per year; (3) replacing the annual primary TSP standard with a  $PM_{10}$  standard of  $50 \mu g/m^3$ , expected annual arithmetic mean; and (4) replacing the secondary TSP standard with 24-hour and annual  $PM_{10}$  standards that are identical in all respects to the primary standards. The Department proposes to adopt these changes.

The specific amendments to the Department's rules include the addition of the definition of  $PM_{10}$  in rule 567--20.2 (455B) (IAC), the updating of the adoption by reference of PSD rules which are affected by the  $PM_{10}$  amendments, the amendment of the Department's emergency air pollution authority as it relates to  $PM_{10}$ , and the revision of the ambient air quality standards.

The Department will conduct \_\_\_\_\_ public hearings to receive comments on these proposed amendments. They will be held at the following times and places:

Written comments will be received by the Department at the Des Moines address given above until 10 days following the date of the last hearing.

These proposed amendments are intended to implement Iowa Code section 455B.133.

The following amendments are proposed:

ITEM 1. Rule 567--20.2(455B) is amended by including the following new definitions:

" $PM_{10}$ " means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by an EPA-approved reference method.

water a permittee may use, what flow restrictions apply to the various sources and whether those flow restrictions apply currently or in the future. (Certain consumptive uses are granted an exemption to flow restrictions until January 1, 1989, under existing rules.)

- b. The telephone answering device used as a means of keeping permittees advised of stream flow conditions and water withdrawal restrictions has been purchased and is in use in the central office.
2. The field offices and the directors of the Environmental Protection Division; the Parks, Recreation and Preserves Division; and the Fish and Wildlife Division will be apprised of all notifications to permittees and will be given weekly updates of streamflow conditions.
3. Because of the current flow conditions and forecasts of a dry summer, a device for providing recorded messages by telephone has been purchased. The device may have other uses in the Department when not needed for the protected flow program. Since the messages will be available 24 hours per day and people may call in the evenings when rates are low, an 800 number is not needed.
4. Compliance actions in response to complaints will be coordinated between the central office and the field offices. The central office shall contact the permittee about whom the complaint is received and send the certified letter referenced above with a summary of the complaint and copy of the letter to the appropriate regional office. If violation continues, the regional offices will be asked to make the field investigation to verify the facts necessary to take an enforcement action.

LG1/cef

cc: Field Office  
Division Administrators

## CURRENT STREAMFLOW DATA SORTED BY THE PERCENT OF PROTECTED FLOW

STATION NAME	DATE OF CURRENT READING	GAGE HEIGHT FEET	CURRENT FLOW (CFS)	REMARKS	PROT. FLOW (CFS)	% OF PROT FLOW	APPROX DAYS TO PROT FLOW	DATE OF PREVIOUS READING	PREV. GAGE HEIGHT	PREVIOUS FLOW (CFS)
Des Moines R (Ft Dodge)	13JUN66	3.74	646.00	FALLING	220.00	794	-	06JUN66	4.07	1,030.00
Iowa River (Luna Tree)	13JUN66	4.02	446.00	FALLING	150.00	287	-	06JUN66	4.16	620.00
Des Moines R (Musselwhite)	13JUN66	3.63	352.00	FALLING	109.00	323	-	06JUN66	4.06	568.00
Des Moines R (Oak City)	13JUN66	8.17	151.00	FALLING	42.00	360	-	06JUN66	6.57	284.00
Mississippi R (Remond)	13JUN66	8.69	502.00		128.00	392	-	06JUN66	8.28	364.00
Mississippi R (Mancos)	13JUN66	2.12	207.00		49.00	422	-	06JUN66	1.76	140.00
Des Moines R (Saylorville)	13JUN66	4.47	855.00	FALLING	200.00	427	-	06JUN66	5.12	1,370.00
Saltwater R (Piquette)	13JUN66	4.41	85.60		20.00	428	-	06JUN66	4.33	74.10
Mississippi R (Randolph)	13JUN66	7.73	308.00		67.00	480	-	06JUN66	7.50	220.00
Mississippi R (Independence)	13JUN66	4.65	83.70	FALLING	17.00	492	-	06JUN66	4.75	93.40
Boyer R (Lagan)	13JUN66	4.70	202.00		41.00	493	-	06JUN66	3.41	144.00
S. Sioux R (Amd)	13JUN66	2.29	24.70	FALLING	4.80	515	-	06JUN66	2.44	41.00
L. Sioux R (Turin)	13JUN66	7.35	1,040.00		200.00	520	-	06JUN66	7.02	881.00
S. Sacaton R (Redfield)	13JUN66	3.76	303.00	RISING	58.00	528	-	06JUN66	3.10	180.00
Sacaton R (Grass)	13JUN66	3.79	41.00	RISING	7.50	547	-	06JUN66	3.50	17.20
Boyer R (Maple)	13JUN66	1.54	275.00		50.00	550	-	06JUN66	1.11	180.00
Thompson R (Davis City)	13JUN66	5.82	73.40		13.00	565	-	06JUN66	1.33	18.40
West Fork Ditch (Merrick)	13JUN66	5.82	73.40		12.00	612	-	06JUN66	5.74	68.20
Rock R (Rock Valley)	13JUN66	4.40	160.00		26.00	615	-	06JUN66	4.63	248.00
S. Sioux R (Carrolltown)	13JUN66	6.41	656.00		106.00	619	-	06JUN66	6.53	889.00
San Blas R (Turin)	13JUN66	4.96	174.00		27.00	644	-	06JUN66	4.92	168.00
Sacaton R (Van Meter)	13JUN66	4.30	1,270.00	RISING	190.00	668	-	06JUN66	3.50	647.00
Blackhawk R (Mason)	13JUN66	5.12	34.50	FALLING	4.50	767	-	06JUN66	5.25	42.40
Des Moines R (SE 14th St)	13JUN66	10.78	2,310.00	RISING	270.00	856	-	06JUN66	10.51	2,040.00
Des Moines R (Estherville)	13JUN66	2.77	197.00	FALLING	22.00	895	-	06JUN66	3.23	343.00
S. Sacaton R (Bayer)	13JUN66	8.45	170.00	RISING	17.00	1000	-	06JUN66	8.47	51.00
Des Moines R (Tracy)	13JUN66	3.95	3,110.00	RISING	300.00	1037	-	06JUN66	3.45	2,320.00
Playa R (James)	13JUN66	10.65	231.00		22.00	1050	-	06JUN66	11.08	2,600.00
Des Moines R (Keesauqua)	13JUN66	11.62	3,830.00	RISING	350.00	1094	-	06JUN66	10.55	204.00
Mississippi R (Atlantic)	13JUN66	3.28	216.00		18.00	1200	-	06JUN66	2.96	37.00
Playa R (Allen)	13JUN66	6.31	53.30		3.30	1615	-	06JUN66	6.22	42.00
WD Playa R (Scruble)	13JUN66	4.30	22.30		0.85	2624	-	06JUN66	4.47	35.00

DEPARTMENT OF NATURAL RESOURCES  
ENVIRONMENTAL PROTECTION COMMISSION  
ATTORNEY GENERAL MEMORANDUM  
JUNE 1, 1988

Name, Location and Region Number	New or Updated	Program	Alleged Violation	DEP Action	Status	Date
Donselle, City of (6)		Wastewater	MIP	Order	Referred	2/16/88
Dysart, City of (5)	Updated	Wastewater	Compliance Schedule	Order/Penalty	Referred Suit Filed Consent Decree	5/21/87 9/30/87 5/15/88
Eilers, Dwayne Waterloo (1)		Flood Plain	Unauthorized Fill	Referred to Attorney General	Referred Suit Filed Default Judgment Bankruptcy	6/19/84 11/10/85 1/12/87
Klings, Catron Des Moines (5)	Updated	Solid Waste	Open Dumping	Order/Penalty	Referred \$600 of \$1000 fine paid - Balance Due	10/20/87 5/31/88
Finlan Landfill Chickasaw County (1)		Solid Waste	Permit/Fee	Court Order	Referred Suit Filed	11/17/87 3/06/88
Garner, City of (2)		Wastewater	Compliance Schedule	Order	Referred Suit Filed	9/21/87 2/16/88
IDP, inc. (Lampenfeld) Denison (4)		Wastewater	Prohibited Discharge	Order	Referred	11/7/87
Jungling Farms, Inc. Butler County (2)		Wastewater	Prohibited Discharge	Order	Referred Suit Filed	7/21/86 1/31/87
King, James & Julia Warren County (5)		Flood Plain	Channel Change	Order	Referred Suit Filed Trial	8/20/87 10/08/87 11/ /88
Lakewood Sanitary District (5)	New	Wastewater	Maintenance		Referred	4/26/88

DEPARTMENT OF NATURAL RESOURCES  
ENVIRONMENTAL PROTECTION COMMISSION  
CONTESTED CASES  
JUNE, 1968

DATE RECEIVED	NAME OF CASE	ACTION APPEALED	PROGRAM	ASSIGNED TO	STATUS
2-25-68	Narves County Breton Bank	Administrative Order	WT	Lands	Phase I complete. Additional investigation necessary.
2-10-68	Lehigh Clay Products	Administrative Order	HC	Lands	Consent order. Appeal dismissed.
2-22-68	Anson	Tax Certification Denial	AD/WH	Lands	Appealed. Request for additional information.
2-29-68	Lynn Henneys Feedlot	Administrative Order	WH	Murphy	Negotiating before filing.
3-01-68	Cloyd Poland	Administrative Order	FP	Clark	Hearing scheduled for 6-28-68.
3-05-68	Metal Grinnel	Administrative Order	WH	Maness	Hearing continued. Negotiating.
4-13-68	Land O'Lakes, Inc.	Administrative Order	WH	Murphy	Negotiating before filing.
4-28-68	Merry Brooks, Engleens Brooks, Gordon Brooks	Administrative Order	FP	Clark	Hearing set for 7-12-68.
5-10-68	Mary's Lakeside	Administrative Order	MS	Murphy	Negotiating before filing.
5-11-68	Conoco Gas & Heat Branch Inn	Administrative Order	MS	Murphy	New case. Hearing set for 7-26-68.
5-16-68	Waspers, City of	Administrative Order	MS	Murphy	New case. Hearing set for 7-27-68.
5-16-68	Narves, City of	Administrative Order	MS	Lands	Negotiating before filing.
5-24-68	TSP, Columbus Junction	NPDES Permit	WH	Maness	New case.

the actions EPA now does in the grant program. This can be arranged by procedures to be developed with EPA concurrence. State rules need only address the basic requirements of loan applicants to address the environmental issues. Further procedures will be contained in the Operating Agreement with EPA. The environmental review will involve state prepared assessments, mailings and a notice period before facility plans can be approved and loans offered.

#### PROJECT DESIGN AND CONSTRUCTION:

9. Value Engineering - Section 218 assures that treatment systems are cost-effective and requires that projects of over \$10 million include a value engineering review (40 CFR 35.2030(b)(3)).

Comment: This is another area that was standard practice in the grant program for large projects. Value engineering is a special cost saving effort done in a special study. Because it applies to projects over \$10 million in cost, it is not expected to affect many loan projects and is generally accepted by large projects as a beneficial effort occurring during the design. It is a city responsibility which need not delay a project. A statement will be adequate in state rules.

10. Sewer Use Ordinance/User Charge System - Section 204(b)(1) requires communities to develop user charge systems and to have the legal, institutional, managerial, and financial capability to construct, operate, and maintain the treatment works (40 CFR 35.2208: Adoption of Sewer Use Ordinance and User Charge System, 35.2130: Sewer Use Ordinance, 35.2140: User Charge System, and 35.2214: Grantee Responsibilities, 35.2122: Approval of User Charge System and proposed Sewer Use Ordinance, 35.2110: Access to Individual Systems, and 35.2206(a): Operation and Maintenance).

## **CROSS CUTTING FEDERAL LAWS AND DIRECTIVES WHICH MAY AFFECT SRF FUNDED PROJECTS**

The following is a list of other federal statutes and programs that projects may need to be aware of. Projects must assure in their loan agreement that they will comply with any applicable federal requirements. The department will work with loan applicants as best it can to identify any of these which may impact their projects.

There may be other provisions of the Clean Water Act Amendment establishing the SRF program that would be appropriately addressed or referenced by state rule either individually or collectively. For example, efforts for minority business enterprise participation and accounting requirements.

### **ENVIRONMENTAL:**

- Archeological and Historic Preservation Act of 1974, PL 93-291
- Clean Air Act, 42 U.S.C. 7506(c)
- Coastal Barrier Resources Act, 16 U.S.C. 3501 et seq.
- Coastal Zone Management Act of 1972, PL 92-583, as amended
- Endangered Species Act 16 U.S.C. 1531, et seq.
- Executive Order 11593, Protection and Enhancement of the Cultural Environment
- Executive Order 11988, Floodplain Management
- Executive Order 11990, Protection of Wetlands
- Farmland Protection Policy Act, 7 U.S.C. 4201 et seq.
- Fish and Wildlife Coordination Act, PL 85 -624, as amended
- National Historic Preservation Act of 1966, PL 89-665, as amended
- Safe Drinking Water Act, section 1424(e), PL 92-523, as amended
- Wild and Scenic Rivers Act, PL 90-542, as amended



**WHAT IS THE OPERATING AGREEMENT?**

1. An agreement between the State and EPA.
2. Establishes basic and fixed program elements.
3. Long term document.
4. Framework of procedures.
  - a. Application process
  - b. Intended use plan development
  - c. Award and payment procedure
  - d. State's administrative and technical procedures to be implemented
  - e. EPA audit procedure
5. Includes:
  - a. Memorandum of Understanding between State agencies
  - b. Legislation
  - c. Commitments
  - d. Organization and flow charts

**WHAT IS THE INTENDED USE PLAN?**

1. An annual plan for each capitalization grant.
2. List of projects.
3. Long term and short term goals.
4. SRF activities.
  - a. Allocation of funds
  - b. Policies
  - c. Administrative costs
5. Assurances and specific proposals.
6. Method for distribution of funds.
  - a. Type communities
  - b. Source and limits of funds
  - c. Allocation to projects
  - d. Payment schedule to the SRF
  - e. SRF disbursement schedule
7. Public input.

**WHAT IS IN THE CAPITALIZATION GRANT APPLICATION?**

1. Assurances and certifications.
2. Operating Agreement.
3. Intended Use Plan.
4. Payment schedule.
5. Application forms.

"Total suspended particulate" means particulate matter as measured by an EPA-approved reference method.

ITEM 2. Amend the first unnumbered paragraph of 567--22.4 (455B) to read as follows:

567--22.4(455B) Special requirements for major stationary sources located in areas designated attainment or unclassified (FSD). Except as provided in subrule 22.4(1), the following federal regulations pertaining to the prevention of significant deterioration are adopted by reference, 40 C.F.R. subsection 52.21 as amended through August 7, 1980 July 1, 1987.

ITEM 3. Amend rule 567--22.4(455B) by adding the following new subrule:

22.4(4) Except as explained below, a permit may not be issued to any new major stationary source or major modification as defined in 567--22.5(455B) and 22.5(1)"a" and "b" if the source or modification would locate in any area designated attainment or unclassifiable for any national ambient air quality standard pursuant to Section 107 of the Act, when the source or modification would cause or contribute to a violation of any national ambient air quality standard. A major source or major modification will be considered to cause or contribute to a violation of a national ambient air quality standard when the air quality impact of the source or modification at any locality that does not or would not meet the applicable national standard would exceed the following significance levels:

Pollutant	Averaging Time				
	Annual	24 Hrs.	8 Hrs.	2 Hrs.	1 Hr.
SO <sub>2</sub>	1.0 ug/m <sup>3</sup>	5 ug/m <sup>3</sup>		25 ug/m <sup>3</sup>	
PM <sub>10</sub>	1.0 ug/m <sup>3</sup>	5 ug/m <sup>3</sup>			
NO <sub>2</sub>	1.0 ug/m <sup>3</sup>				
CO			0.5 ug/m <sup>3</sup>		2 ug/m <sup>3</sup>

A permit may be granted to a major source or major modification as identified above if it reduces the impact of its emissions upon air quality by obtaining sufficient emissions reductions to compensate for its adverse ambient impact where the major source or major modification would otherwise cause or contribute to a violation of any national ambient air quality standard. This section shall not apply to a major source or major modification with respect to a particular pollutant if the owner or operator demonstrates that the source is located in an area designated under Section 107 of the Act as nonattainment for that pollutant.

ITEM 4. Amend paragraph 567--22.5(1)"k" by adding "PM<sub>10</sub>: 15 typ" to the list of pollutants.

ITEM 5. Delete subrule 567--22.5(6).

ITEM 6. Amend rule 567--26.2(455B) by deleting all of subparagraphs 567--26.2(2)"a"(3), 26.2(2)"b"(3) and 26.2(2)"c"(3) and by renumbering the rule accordingly.

ITEM 7. Amend subparagraph 567--26.2(2)"a"(2) to read as follows:

(2) Fine particulate matter (PM<sub>10</sub>) 5+0-600-or-875 350 micrograms per cubic meter, 24-hour average.

ITEM 8. Amend subparagraph 567--26.2(2)"b"(2) to read as follows:

(2) Fine particulate matter (PM<sub>10</sub>) 5+0-600-or-625 420 micrograms per cubic meter, 24-hour average.



TERRY E. BRANSTAD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

LARRY J. WILSON, DIRECTOR

DATE: June 16, 1988

TO: Larry J. Wilson, Allan Stokes, Darrell McAllister, Dennis Alt, Allen Ferris, All Field Office Administrators, and Jerry Ostendorf (Office of Disaster Services)

FROM: Victor I. Okereke *Victor*

SUBJECT: Current Stream Flow Conditions

Attached to this report are tabular and graphical data showing the stream flow conditions for the week of June 13, 1988, at index gaging stations around the state. The tables indicate which streams and stream reaches are below the protected flow levels, streams that are nearing the protected flows and streams and stream reaches that are flowing at rates that are substantially above the protected flow levels. Protected flows are mandated by law and are stream flow levels at which all consumptive withdrawals in excess of 25,000 gallons per day are prohibited. However, when a stream reach is at or below the protected flow, individual consumptive withdrawal of up to 25,000 gallons per day from the source in question is still allowed.

At this time, four Iowa streams, are flowing below their protected flows. However, several other streams are very close to their respective protected flows. Consumptive users on the affected streams have been informed of this fact to help them prepare for a possible cessation of water withdrawals from the affected sources. A visual illustration of the situation is provided on the map attached to this report.

1. Streams Currently Below The Protected Flow: The following streams are currently flowing below the protected flows.

<u>Stream</u>	<u>Gage Location</u>
English River	Kelona
Little Cedar River	Ionis
Winnebago River	Mason City
Cedar River	Waterloo

Last week, only one Iowa stream, the English River, was at or below the protected flow.

2. Streams Nearing The Protected Flow: The flow of the following 13 streams or stream reaches are between the protected flows and 200 percent of the protected flows.

<u>Stream</u>	<u>Gage Location</u>
Maquoketa River	Maquoketa
Cedar River	Cedar Rapids

DEPARTMENT OF ENVIRONMENTAL RESOURCES  
WATER/SEWAGE/HAZARDOUS WASTE COMMISSION  
ATTORNEY GENERAL, MEMPHIS

JUNE 1, 1988

Case, Location and Region Number	Is or Updated	Program	Alleged Violation	IR# Action	Status	Date
Case: Robert: 200 Ind. Chattanooga, Tenn. (4)		Solid Waste	Open Dumping	Order/Penalty	Referred	11/17/87
Memphis, City of (5)		Sanitation	Sanitation	Order	Referred	5/17/88
East Green, City of (6)		Sanitation	MIP	Order:	Referred	3/24/88
Indianapolis, City of (6)	Yes	Sanitation	MIP	Order:	Referred	5/17/88
St. Petersburg, City of (6)	Yes	Sanitation	MIP	Order	Referred	4/26/88
Small, City of (5)		Sanitation	MIP Compliance Schedule	Order/Penalty	Referred	1/21/88
J.P. Mills, Ind. (5)	Yes	Solid Waste	Open Dumping	Referred to Attorney General	Referred	5/17/88
Greene County Oil Company Greene County (4)		Sanitation	Prohibited Discharge	Referred to Attorney General	Petition Filed Judgment Assessed Cleanup Plan Approved	3/ /83 10/12/84 10/24/84 1/27/86
Pharmaceutical, Williams et al. Greene Co. (5)		Drinking Water	Penalty Non-payment	Order/Penalty	Referred Informal Settlement	1/21/88 4/13/88
Prognostic, Williams et al. Greene County (4)		Flood Plain	Channel Change	Referred to Attorney General	Referred Suit Filed	3/20/87 6/25/87
Chickasaw, Memphis, Private-I Greene County (5)		Sanitation Waste	Prohibited and Storage Violations	Referred to Attorney General	Referred Judgment Appealed to Sup. Court Decided in our favor	9/18/84 5/86 7/86 12/13/87

ENVIRONMENTAL PROTECTION COMMISSION

Item 14

Informational

STATE REVOLVING FUND

A report will be presented on the status of the development of state rules for implementing the revolving fund to utilize federal grant funds anticipated to be available in fiscal 1989. A schedule showing projected activities necessary to implement the program will be included. A report by a representative of the Iowa Finance Authority is also expected.

Wayne Farrand  
6-3-88

(104.MJN/sc)

Comment: The sewer use and user charge ordinance requirements are a standard and accepted practice in the construction grant program. A considerable effort is normally put into projects by cities and department staff in seeing that local ordinances conform to EPA standards. The above statement from EPA's SRF guidelines references both ordinances and many citations to the grant regulations. Elsewhere, the guidance indicates that only the statutory requirements must be met. The statutory requirement at 204(b)(1) only deals with user charges that must be proportionate and the city's capability to manage construction and operation of the project. It is expected that the grant requirements can be streamlined for loan projects. One main concern of loan projects will be financial capability to repay the loan and this will get a good deal of attention in the loan agreement process. 204(b) user charge requirements deal mainly with operation and maintenance costs. Specific requirements should be worded into Iowa rules simplifying as much as possible requirements that will apply to projects.

11. Davis - Bacon Act - Section 513 applies Davis-Bacon labor wage provisions to treatment works construction (see 29 CFR Part 5). Wages paid for the construction of treatment works must conform to the prevailing wage rates established for the locality by the U.S. Department of Labor under the Davis-Bacon Act (Section 513, applies 40 U.S.C. 276 et. seq.).

Comment: This can sometimes be a controversial or problematic area. It is a standard grant project requirement that the department is familiar with and its procedures to accommodate. Direct state contact with the Department of Labor (DOL) is necessary to see that specifications contain proper wage rates prior to bid advertising. DOL inefficiencies and errors have caused some complexities in grant funded projects. In any event, the above wording is adequate to explain the requirement in state rules.

#### **ECONOMIC:**

- **Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended**
- **Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans**

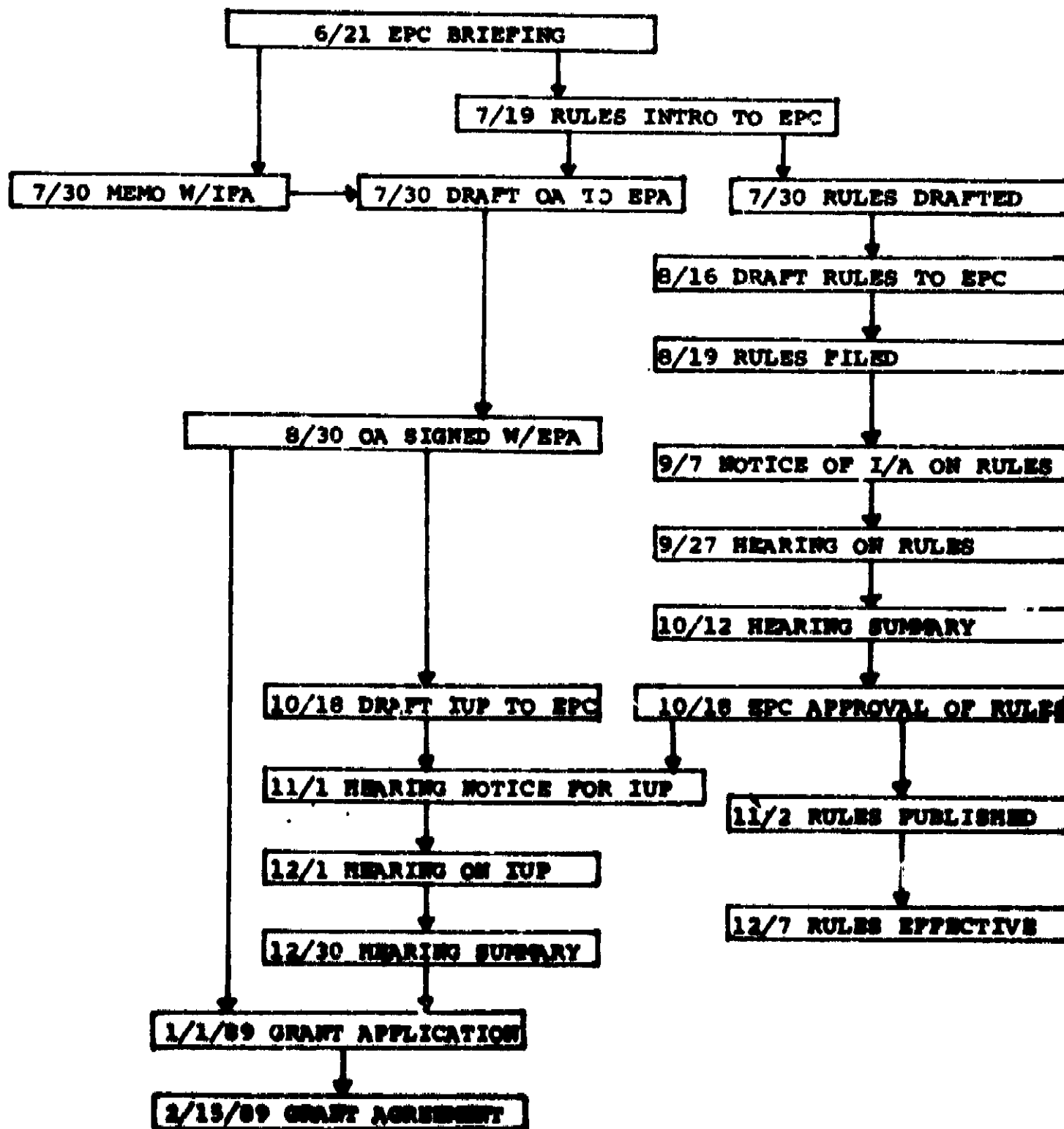
#### **SOCIAL LEGISLATION:**

- **Age Discrimination Act, PL 94-135**
- **Civil Rights Act of 1964, PL 88-352**
- **Section 13 of PL 92-500; Prohibition against sex discrimination under the Federal Water Pollution Control Act**
- **Executive Order 11246, Equal Employment Opportunity**
- **Executive Orders 11625 and 12138, Women's and Minority Business Enterprise**
- **Rehabilitation Act of 1973, PL 93-112 (including Executive Orders 11914 and 11250)**

#### **MISCELLANEOUS AUTHORITY:**

- **Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 91-646**
- **Executive Order 12549 - Debarment and Suspension**

## PROJECTED DEVELOPMENT SCHEDULE FLOW CHART





ITEM 9. Amend subparagraph 567--26.2(2)"c"(2) to read as follows:

(2) Fine particulate matter (PM-10) 7.0-8.0-er-875 500 micrograms per cubic meter, 24-hour average.

ITEM 10. Amend rule 567--26.1(455B) as follows:

567--26.1(455B) Statewide standards. The state of Iowa ambient air quality standards shall be the National Primary and Secondary Ambient Air Quality Standards as published in 40 Code of Federal Regulations Part 50 (1972) and as amended at 38 Federal Register 22384 (September 14, 1973), 43 Federal Register 46258 (October 5, 1978), and 44 Federal Register 8202, 8220 (February 9, 1979), and 52 Federal Register 24634-24669 (July 1, 1987).

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Date

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Larry J. Wilson, Director

(EP20.MIN/sc)

Iowa River  
Cedar River  
Cedar River  
Beaver Creek  
Shell Rock River  
Chariton River  
Skunk River  
Middle River  
Iowa River  
South River  
South Skunk River

Marshalltown  
Charles City  
Conesville  
New Hartford  
Shell Rock  
Moulton  
Augusta  
Indianola  
Wapello  
Ackworth  
Oskaloosa

Last week ten Iowa streams or stream reaches fell into this category as compared to 13 this week. Three of the stream reaches listed in this category last week (Little Cedar at Ionis, Winnebago at Mason, and Cedar River at Waterloo) fell below their protected flow levels during the week. Two other streams (Upper Iowa, and the Thompson River) gained sufficient flows to the extent that they had to be removed from the "critical flow" list.

3. Streams That May Reach Protected Flow In The Next Two To Three Weeks:  
The following 15 streams are flowing at between 200 percent and 300 percent of the protected flows:

<u>Stream</u>	<u>Gage Location</u>
Upper Iowa River	Dorchester
Iowa River	Marango
WF Cedar River	Finchford
White Breast Creek	Dallas
North Skunk River	Sigourney
Nodaway River	Clarinda
Wapsipinicon	DeWitt
Iowa River	Marango
Iowa River	Iowa City
Iowa River	Lone Tree
WF Cedar River	Finchford
Des Moines River	Fort Dodge
Roone River	Wehster City
Des Moines River	Stratford
North Raccoon River	Jafferson

Last week, 21 streams or stream reaches were in the above category. This week, 15 streams or stream reaches fell into this classification.

Overall, the stream flow situation is worse than it was last week. Available data indicates steady or falling stream flows at most of the index stations. It could have been worse though. Without the rain that fell on certain parts of the state last week, the stream flow conditions would have been considerably worse than they are at this time.

(61488-89./saf)



## **FEDERAL REQUIREMENTS AFFECTING PROJECTS RECEIVING LOANS FROM THE SRF**

The Clean Water Act Amendments identify requirements for projects funded with SRF funds (at least to the extent of the federal capitalization grant to the state). Sixteen specific statutory references are cited which parallel the traditional construction grant requirements. There are also additional federal laws and directives that broadly apply to SRF funded projects. These are listed later.

An overview of the statutory requirements is presented here. The state may use procedures and regulations for grant funded projects or develop its own. These requirements should be identified in the stated SRF rules for clarity. Each statutory requirement is accompanied by citations to grant regulations used to implement it in the grant program. Grant regulations have a high degree of familiarity, however, a state may be able to streamline some procedures to more appropriately address financing by loans and still meet the statutory requirements. A staff comment also accompanies each requirement listed. The requirements are listed below by project stage. Many of the requirements apply to facility planning as has been required under the grants program.

### **PROJECT PLANNING:**

1. Best Practicable Waste Treatment Technology - Section 201(b), requires that projects apply best practicable waste treatment technology (see 40 CFR 35.2003(h)(7); Definition of BPWT, 40 CFR 35.2010(b)(7); Facilities Planning).

Comment: This is just a well understood reference to the cost effective technology of common practice to provide required treatment. It is expected this can best be met by a reference in the state rule to the federal regulation. This requirement carries no significant issue.

12. Project Performance - Section 204(d)(2) requires that one year after the date of construction the owner/operator of the treatment works must certify that the facility meets design specifications and effluent limitations included in its permit ((40 CFR 35.2218(c), (d) and (e)(2): Project Performance).

Comment: This requirement has kept the department financially involved in grant projects long past completion of construction. Grant program procedures are in place, however, can possibly be simplified for loan projects. Basic concerns are defining when projects go into operation and the consequences of a non-affirmative certification. State rules should clearly state how loan recipients are affected by the requirement.

#### **GENERAL QUALIFICATION REQUIREMENTS:**

The following are basic qualifying factors rather than specific project requirements.

13. Eligible Categories of Need - Section 201(a)(1) limits assistance to projects for secondary treatment, advanced treatment, or any cost-effective alternative, new interceptors and appurtenances, and infiltration - inflow correction. This Section retains the Governor's discretionary set-aside by which a State can use up to 20 percent of its allotment for other projects within the definition of treatment works in Section 212(2), and for certain nonpoint source control and ground water protection purposes, as defined in Section 319 of the Act and subsequent Agency regulations (40 CFR 35.2015(b)(2)(ii-iv): State Priority System and Project Priority List).

Comment: This merely identifies the categories of projects eligible for loans as the same as those eligible for grants, with the addition of nonpoint and ground water project potential, once the needs of the other

**ICMA SRP RULES  
GENERAL OUTLINE**

**6/17/88 WCF**

- I. Authority**
- II. Definitions**
  - A. Act**
  - B. Authority (IFA)**
  - C. Commission**
  - D. Department**
  - E. Eligible recipient**
  - F. Equivalency**
  - G. Fund**
  - H. Market interest rate**
  - I. Project**
- III. General Policy**
  - A. Type of assistance/loans**
  - B. Administration**
  - C. Decisions**
  - D. First Use**
  - E. Minimum/Maximum loans**
  - F. Eligible projects/phased projects**
  - G. Ineligible costs**
  - H. State capitalisation grant**
  - I. Intended Use Plan - Public participation**
  - J. Loan commitments**
  - K. Loan adjustments**
  - L. General loan terms - interest methodology**
- IV. Application Procedure**
  - A. Forms**
  - B. Timing**
- V. Priority List**
  - A. Projects considered**
  - B. Enforceable requirements**
  - C. Priority ranking system - reference to grant rules**
  - D. General schedule**
  - E. Intended Use Plan - project list**
    - 1. Willingness**
    - 2. Readiness**
    - 3. Financial capability review**
    - 4. Contingency list**
- VI. Application and project initiation**
  - A. Preapplication conference**
  - B. Review criteria/loan commitment**
  - C. Application denial**

# SRF BRIEFING INFORMATION

6/17/88 WCP

## PROJECTED DEVELOPMENT SCHEDULE

### Estimated Date

### Activity

6/21/88

EPC Briefing

7/19/88

Rules introduced to EPC

7/30/88

Rules drafted

Memorandum of Understanding with IPA

Draft Operating Agreement to EPA

★ 8/15/88

Draft rules to EPC ★ EMERGENCY Adoption

8/19/88

Rules filed

8/30/88

Operating Agreement signed by EPA

9/7/88

Notice of Intended Action on rules

9/27/88

Public hearing on rules

10/12/88

Hearing summary completed

10/18/88

EPC approval of rules

★ 8/16

Proposed Intended Use Plan to EPC

~~11/2/88~~ 9/1/88

Intended Use Plan notice of public hearing

11/2/88

Rules published

~~12/1/88~~ 10/1/88

Hearing on Intended Use Plan

~~12/10/88~~ 10/14/88

Intended Use Plan hearing summary completed

~~12/22/88~~ 10/17/88

Grant Application submitted to EPA

~~2/25/88~~ 11/1/88

Grant agreement

DATE: June 9, 1988

TO: Allan Stokes, Allen Farris, Derrel McAllister, and Field Office Administrators

FROM: Dennis Alt 

RE: Implementation of the protected streamflow restrictions under the Water Permit Program.

Legal Authority. Iowa Code Section 455B.267(1) states:

"The director of the commission may issue a permit for beneficial use of water in a watercourse if the established average minimum water flow is preserved.

The phrase "protected flow" is used in place of the term "establishes average minimum water flow" to provide a phrase that is more meaningful to the public.

Rules 567--52.3 through 567--52.4(2), IAC explain that consumptive uses of water directly from streams and from alluvial aquifers, if the withdrawal point is located within 1/8 mile of a stream, must cease when the streamflow is less than the protected flows listed in 567--52.8. Consumptive uses of water from alluvial aquifers, if the withdrawal point is more than 1/8 mile but less than 1/4 mile from a stream must cease when the streamflow is less than the seven-day, one-in-ten year low flow (7Q10). "Consumptive use" is defined in rule 567--50.2 as "any use of water, except for a municipal use or municipal-type use, which involves substantial evaporation, transpiration or incorporation of water in a product or removal of water from a watercourse without prompt return thereto. Consumptive uses include, but are not limited to, irrigation, evaporative cooling, and flooding of wildlife areas by withdrawals or diversions from watercourses." Note that as a matter of policy, public water supplies are excluded from protected flow restrictions whether or not their use is in reality nonconsumptive.

Background. There are currently 330 water use permits that have permit conditions allowing consumptive uses of water from streams and from alluvial aquifers within 1/8 mile of streams only when the stream's flow is more than the "protected flow" listed in rule 52.8(3). An additional 34 permits allow consumptive uses from alluvial aquifers at points greater than 1/8 mile but less than 1/4 mile from streams only when the stream's flow is greater than the 7Q10.

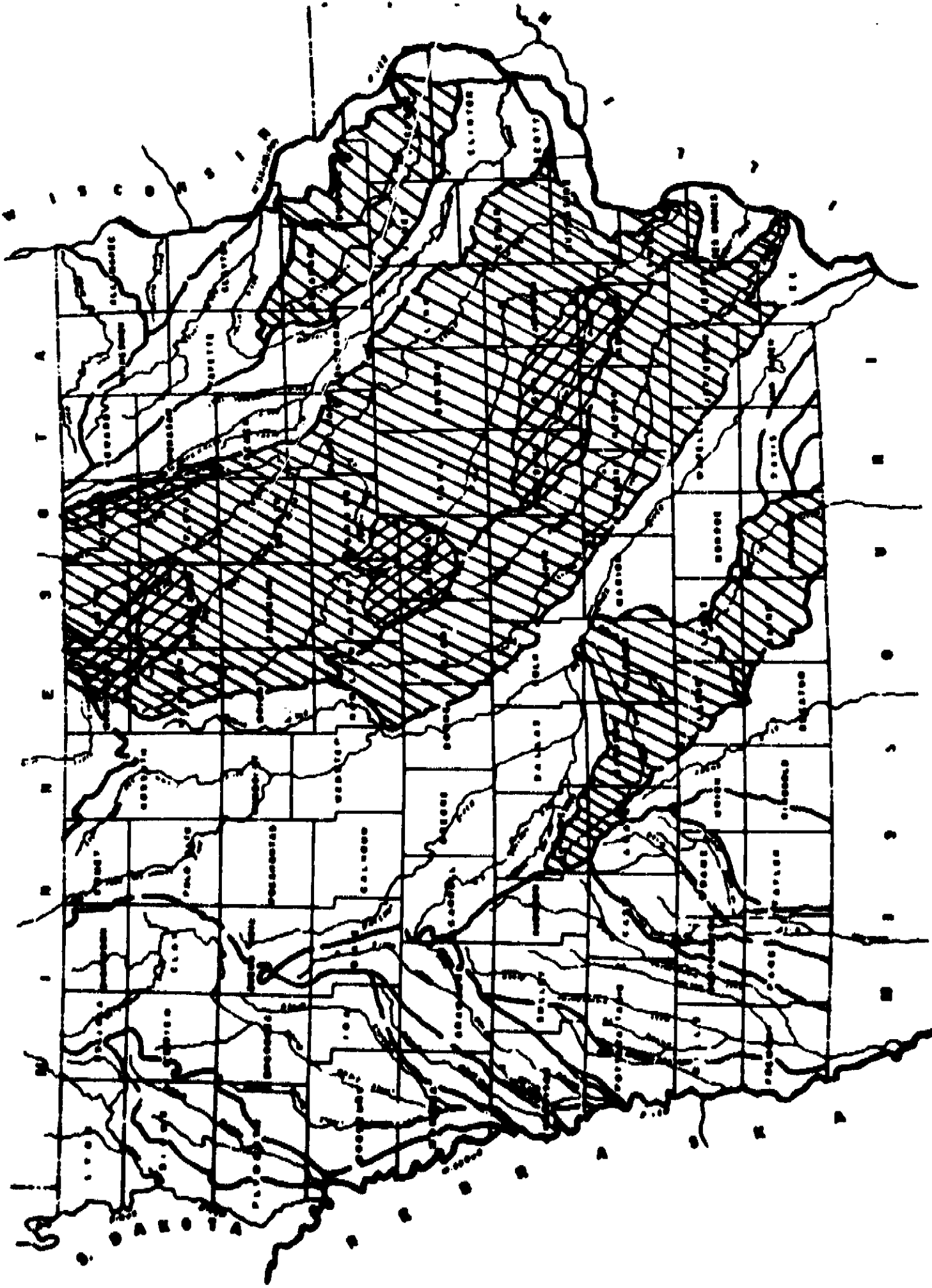
Current Conditions. AT the present time streams in several areas of the state are at or nearing 200% of their protected flows. The weather forecasts for the summer are for drier than normal conditions so it is likely that we will be enforcing pumping restrictions this year.

Implementation. Implementation of protected flow restrictions will be handled by the central office. Implementation consists of two components:

1. notifying permittees that stream segments are below protected flows and pumping must cease and



STREAMFLOW CONDITIONS FOR THE WEEK OF June 13, 1988



Streams below 200%  
of the protected flow



Streams below the  
protected flow